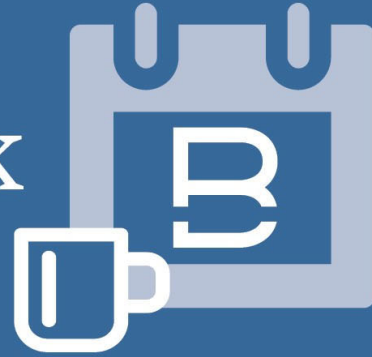


The Work Week

Bassford Remele Employment Practice Group



May 28, 2024

Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Another Record Year for Legislative Changes

[Beth L. LaCanne](#)

In another memorable legislative session, the Minnesota legislature passed numerous bills that we have previewed over the last few months for their potential impact on employers, employees, and the workplace. The governor has signed the bills and they are now law. This week's edition of *The Work Week* covers the portions of the bills that impact employers and the effective dates of each.

1. ESST Amendments

The amendments to the Earned Sick and Safe Time (ESST) law include new provisions and amendments to the existing law.

- a. Remedies: The most significant addition is the liability risk to employers for non-compliance. Employers who violate the ESST law are subject to a liquidated damages penalty in an amount equal to the ESST that should have been provided under the law, effectively imposing a double-damages penalty. An employer is also liable for liquidated damages if it does not maintain the necessary records to determine the amount of ESST accrued and owed. The employer will be liable to employees for the equivalent of 48 hours of ESST plus an equal amount of liquidated damages.
- b. Qualifying Purpose: Bereavement leave is now a qualifying use of ESST.
- c. Qualified Individual: The definition of "employee" excludes volunteer firefighters, elected officials, and farm employees performing less than 28 days of work each year.
- d. Earning Statements: Paystubs no longer need to include both accrued and used ESST. If an employer removes the information from paystubs, the employer must provide the information to employees in an alternative means, including access to the information through separate electronic means. Employers are also required to preserve all electronic records of ESST information for three years.

- e. Rate of Pay: The rate at which ESST must be paid is at the employee's regular rate of pay rather than the employee's hourly rate. For employers who use the 48-hour accrual method, unused ESST must be paid at the employee's regular rate of pay.
- f. Increment of Use: ESST must be used in at least 15-minute increments.
- g. Documentation: The three-day waiting period for requesting documentation has been revised to three *consecutive scheduled* days. Additionally, an employee using ESST related to domestic violence matters may submit a written statement if they are unable to get other documentation within a reasonable time or without added expense.

2. Paid Leave Law Amendments

Amendments to the Paid Leave Law were substantial and will be the subject of next week's edition of *The Work Week*. The amendments include setting minimum increments of leave time; clarifying the receipt of benefits during leave; establishing procedures to appeal leave-eligibility determinations; and privacy provisions.

3. Worker Classification

The legislature took the opportunity to rework the worker classification statutes and to establish a partnership between several state agencies for the purpose of enforcing the classification statutes. The worker classification statutes generally prohibit: (a) the failure to properly classify, represent, or treat an individual as an employee; (b) the failure to report or disclose to any person or government agency an individual who is an employee; and (c) the requirement or request that an employee enter into an agreement or complete any document that indicates the employee is an independent contractor.

For all individuals, except those in the construction industry, the test to determine whether that individual is an employee or an independent contractor is the "right to control" test.

For workers in the construction industry, the previous nine-factor test has been expanded to a fourteen-factor test. Some of the existing nine factors have been modified slightly. In addition, an individual must meet five additional criteria to be considered an independent contractor. Now, the individual's business must: (a) provide W9 forms as required by the IRS; (b) maintain a current certificate of good standing with the Minnesota Secretary of State; (c) maintain an unemployment-insurance account; (d) maintain workers'-compensation insurance; and (e) hold all requisite licenses, registrations, and certifications as required by law.

In addition, an aggrieved individual may now bring a lawsuit under the private attorney general statute for violations of the worker classification statutes. In addition to the penalties that the commissioner can impose, an aggrieved party may recover compensatory damages as well as their attorney fees, costs, disbursements, and witness fees.

The amendments to the worker classification statutes are effective July 1, 2024, with one exception. The five additional criteria required to be an independent contractor in the construction industry will be effective for any building construction or improvement services provided or performed on or after March 1, 2025.

4. Pay Transparency

Beginning on January 1, 2025, employers with 30 or more employees in Minnesota must disclose the starting salary range and general description of all benefits and other compensation to be offered to a hired job applicant in each respective job posting. The salary range may not be open-ended. If an employer does not offer a salary range, they must list a fixed pay rate.

5. Standard Minimum Wage and Credit Card Tips

Beginning January 1, 2025, every employer must pay the standard minimum wage, regardless of size. No longer is there a differentiation between large and small employers.

Beginning August 1, 2024, credit card tips received by an employee must be credited to the employee in the pay period received and paid to the employee no later than the next scheduled pay period. The bill also gives power to the Department of Labor and Industry (“DOL”) to enforce certain standards such as ensuring that wages are paid every fifteen days and that false statements are not being made as an inducement to commence employment. The bill further allows the DOL commissioner to set the time and manner for employers to submit required labor records. Finally, the new provisions also allow the commissioner to order reinstatement of an employee as part of the relief granted through its compliance order authority.

6. Mandatory Signage Related to Captive Audience Meetings or Communications

Beginning on October 1, 2024, employers must utilize the educational poster developed by the DOL regarding an employee’s rights related to employer-sponsored meetings or communications where the employer’s opinion on religion or politics is discussed.

7. Non-Solicitation Provisions Prohibited in Service Contracts

Beginning July 1, 2024, employers who provide services to customers cannot prevent the customer from directly or indirectly soliciting or hiring one of the employer’s employees. The contract a service provider signs with a customer cannot restrict or prohibit the customer from hiring the employees either. If an existing contract already has a restriction in it prohibited by the section, the service provider is required to provide notice to their employees of the new law and the existing contract provision that violates the law.

8. Child Labor Law Update

Beginning August 1, 2024, the child-labor-law statutes will be amended as follows:

- a. A compliance order issued for a violation of a child labor provision becomes final if no written objection is filed within 15 days.
- b. Employers who contest a compliance order may be liable for litigation and hearing costs associated with contesting the order unless the employer can show the costs would cause extreme financial hardship. In that case, the commissioner may require payment of a percentage of the costs that will not cause extreme financial hardship.
- c. The commissioner has discretion as to what fine amount to impose, up to a specific amount that is set in the statute for each violation. In determining the fine amount, the commissioner considers the size of the business, gravity of the violation, and history of past violations.

- d. Minors under 18 who are required to work in hazardous occupations are entitled to liquidated damages equal to the minor's regular rate of pay plus the wages earned for all hours the minor worked in a hazardous occupation.
- e. Employers cannot retaliate against an employee who asserts their rights or files a complaint under the child labor provisions in chapter 181A or related rules.

9. Occupational Health and Safety Act Amendments

Beginning August 1, 2024, the OSHA review board's hearings and meetings to deliberate to reach its decision on petitions or appeals are exempt from open-meeting-law requirements. Additionally, the review board has the authority to not only revise or reverse but also to affirm or remand administrative-law judge orders and decisions. With respect to petitions to vacate a final order of the commissioner, the review board has the authority to affirm or vacate and remand the commissioner's final order. A final order may only be vacated and remanded for three reasons: (a) if the commissioner has made a mistake of fact or law; (b) fraud; or (c) newly discovered evidence. The right to judicial review now includes final orders on the petition to vacate a final order. Finally, OSHA may share investigative data with city and county attorneys, allowing for investigative data to be shared to aid the law enforcement process.

10. Surgical Smoke Evacuation Systems

Beginning January 1, 2025, health-care employers who perform surgeries (such as hospitals, ambulatory surgical facilities, and outpatient centers) must use a smoke-evacuation system to capture and filter surgical smoke.

11. Oral Fluid Testing under DATWA

Beginning August 1, 2024, employers may use oral-fluid testing to measure the presence of drugs, alcohol, cannabis, or other metabolites so long as the test can detect at the same or better levels of the existing lab programs under the Drug and Alcohol Testing in the Workplace Act ("DATWA"). A licensed, accredited, or certified lab is not required if an employer follows the procedures for an oral-fluid test. Other requirements, such as chain-of-custody, do not apply to oral-fluid testing. However, existing reliability and safeguard provisions still apply to oral-fluid testing.

12. Pregnancy Accommodation Statute

The pregnancy accommodation statute has been amended to align with the pregnancy and parenting leave statute regarding the continuation of insurance during leave. Beginning August 1, 2024, both sections 181.939 and 181.941 require an employer to continue health insurance, provided that the employee continues to pay their share of the cost of the benefits, if any. Additionally, the 12 weeks of unpaid parenting and pregnancy leave under section 181.941 cannot be reduced by the time taken to attend prenatal medical appointments.

13. Access to Personnel Records

Beginning August 1, 2024, all employers must comply with the statutes regarding personnel records. The statutes are no longer limited to employers with 20 or more employees.

2024 Employment-Related Legislation Summary	
Effective Dates	
Effective May 25, 2024	
ESST Amendments (Minn. Stat. § 177.27, <i>et seq.</i>)	Minnesota Paid Leave Law Amendments (Minn. Stat. § 268B, <i>et seq.</i>) *The amendments do not change the date that employers are required to provide paid leave which remains January 1, 2026.
Effective July 1, 2024	
Non-Solicitation in Service Contracts (Minn. Stat. § 181.9881)	Worker Classification (Minn. Stat. §§ 181.722 and 181.723)
Effective August 1, 2024	
Credit Card Tips (Minn. Stat. § 177.24)	Oral Fluid Testing (under DATWA) (Minn. Stat. §§ 181.950 and 181.953)
Pregnancy Leave and Pregnancy Accommodation Amendments (Minn. Stat. §§ 181.939, 181.941 and 181.943)	OSHA Amendments (Minn. Stat. §§ 182.6526, 182.664, 182.665, and 182.667)
Personnel Records (Minn. Stat. § 181.960, <i>et seq.</i>)	Child Labor Law Amendments (Minn. Stat. §§ 181A.08 and 181A.12)
Effective October 1, 2024	
Captive Audience Meeting Mandatory Signage (Minn. Stat. § 181.531)	
Effective January 1, 2025	
Pay Transparency - Salary Range in Job Posting (Minn. Stat. § 181.173)	Minimum Wage Regardless of Employer Size (Minn. Stat. § 177.24)
Surgical Smoke Evacuation Systems (Minn. Stat. § 182.678)	

The 2024 Minnesota legislative session served up new laws and amendments to others. Bassford Remele is prepared to discuss how the new laws and amendments may impact your business. Should you have any questions regarding any of the legislation, please reach out to the [Employment Law](#) practice group at Bassford Remele!

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