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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 39

01/11/2021 Authored by Carlson; Xiong, T.; Pinto; Greenman; Reyer and others
The bill was read for the first time and referred to the Committee on Labor, Industry, Veterans and Military Affairs Finance and Policy
02/01/2021 Adoption of Report: Amended and re-referred to the Committee on Judiciary Finance and Civil Law
02/15/2021 Adoption of Report: Amended and re-referred to the Committee on Ways and Means
03/23/2021 Adoption of Report: Placed on the General Register as Amended
Read for the Second Time

1.1 A bill for an act
1.2 relating to employment; providing rehire and retention protections for laid-off
1.3 workers during a declared emergency; imposing civil penalties; appropriating
1.4 money.

1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. DEFINITIONS.

1.7 Subdivision 1. Applicability. For the purposes of sections 1 to 4, the following terms
1.8 have the meanings given in this section.

1.9 Subd. 2. Air carrier. "Air carrier" means a person undertaking by any means, directly
1.10 or indirectly, to provide air transportation of persons, property, or mail.

1.11 Subd. 3. Aircraft. "Aircraft" means any contrivance invented, used, or designed for
1.12 navigation of or flight in the air, but excluding parachutes.

1.13 Subd. 4. Airport. "Airport" means any area of land or water, except a restricted landing
1.14 area, which is designed for the landing and takeoff of aircraft, whether or not facilities are
1.15 provided for the shelter, surfacing, or repair of aircraft, or for receiving or discharging
1.16 passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other
1.17 airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter
1.18 established.

1.19 Subd. 5. Airport authority. "Airport authority" means an authority created pursuant to
1.20 Minnesota Statutes, section 360.0426.

1.21 Subd. 6. Airport facility management. "Airport facility management" means a person
1.22 directing or supervising airport management activities, including but not limited to:

2.1 (1) information management;

2.2 (2) building and property management;

2.3 (3) civil services;

2.4 (4) procurement and logistics management; and

2.5 (5) legal services.

2.6 Subd. 7. **Airport hospitality operation.** (a) "Airport hospitality operation" means a
2.7 business that:

2.8 (1) prepares, delivers, inspects, or provides any other service in connection with the
2.9 preparation of food or beverage for aircraft crew or passengers at an airport; or

2.10 (2) provides food and beverage, retail, or other consumer goods or services to the public
2.11 at an airport.

2.12 (b) Airport hospitality operation does not include an air carrier certified by the Federal
2.13 Aviation Administration.

2.14 Subd. 8. **Airport service provider.** (a) "Airport service provider" means a business that
2.15 performs, under contract with a passenger air carrier, airport facility management, or airport
2.16 authority, functions on the property of the airport that are directly related to the air
2.17 transportation of persons, property, or mail, including but not limited to:

2.18 (1) the loading and unloading of property on aircraft;

2.19 (2) assistance to passengers under Code of Federal Regulations, title 14, part 382;

2.20 (3) security;

2.21 (4) airport ticketing and check-in functions;

2.22 (5) ground-handling of aircraft;

2.23 (6) aircraft cleaning and sanitization functions; or

2.24 (7) airport authority.

2.25 (b) Airport service provider does not include an air carrier certificated by the Federal
2.26 Aviation Administration.

2.27 Subd. 9. **Building service.** "Building service" means janitorial, building maintenance,
2.28 or security services.

2.29 Subd. 10. **Business day.** "Business day" means Monday through Friday, excluding any
2.30 holidays as defined in Minnesota Statutes, section 645.44.

3.1 Subd. 11. **Change in control.** "Change in control" means any sale, assignment, transfer,
3.2 contribution, or other disposition of all or substantially all of the assets used in the operation
3.3 of an enterprise or a discrete portion of the enterprise that continues in operation as an
3.4 enterprise, or a controlling interest, including by consolidation, merger, or reorganization,
3.5 of the incumbent employer or any person who controls the incumbent employer.

3.6 Subd. 12. **Declared emergency.** "Declared emergency" means a national security or
3.7 peacetime emergency declared by the governor under Minnesota Statutes, section 12.31, a
3.8 local emergency declared by the mayor of a municipality or the chair of a county board of
3.9 commissioners under Minnesota Statutes, section 12.29, a federal public health emergency
3.10 declared by the secretary of the Department of Health and Human Services, or a major
3.11 disaster or national emergency declared by the president.

3.12 Subd. 13. **Eligible employee.** (a) "Eligible employee" means an individual:

3.13 (1) whose primary place of employment is at an enterprise subject to a change in control;

3.14 (2) who is employed directly by the incumbent employer, or by an employer who has
3.15 contracted with the incumbent employer to provide services at the enterprise subject to a
3.16 change in control; and

3.17 (3) who has worked for the incumbent employer for at least one month prior to the
3.18 execution of the transfer document.

3.19 (b) Eligible employee does not include a managerial, supervisory, or confidential
3.20 employee.

3.21 Subd. 14. **Employee.** "Employee" means an individual who performs services for hire
3.22 for at least two hours in a particular week for an employer.

3.23 Subd. 15. **Employer.** "Employer" means any person who directly, indirectly, or through
3.24 an agent or any other person, including through the services of a temporary service or staffing
3.25 agency or similar entity, owns or operates an enterprise and employs one or more employees.

3.26 Subd. 16. **Enterprise.** "Enterprise" means a hotel, event center, airport hospitality
3.27 operation, airport service provider, or the provision of building service to office, retail, or
3.28 other commercial buildings.

3.29 Subd. 17. **Event center.** (a) "Event center" means a publicly or privately owned structure
3.30 of more than 50,000 square feet or 2,000 seats that is used for the purposes of public
3.31 performances, sporting events, business meetings, or similar events, and includes concert
3.32 halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

4.1 (b) Event center also includes any contracted, leased, or sublet premises connected to
4.2 or operated in conjunction with the event center's purpose, including food preparation
4.3 facilities, concessions, retail stores, restaurants, bars, and structured parking facilities.

4.4 Subd. 18. **Hotel.** (a) "Hotel" means a building, structure, enclosure, or any part thereof:

4.5 (1) used as, maintained as, advertised as, or held out to be a place where sleeping
4.6 accommodations, lodging, and other related services are furnished to the public; and

4.7 (2) containing 75 or more guest rooms, or suites of rooms, except adjoining rooms do
4.8 not constitute a suite of rooms. The number of guest rooms, or suites of rooms, shall be
4.9 calculated based on the room count on the opening of the hotel or on December 31, 2019,
4.10 whichever is greater.

4.11 (b) Hotel also includes any contracted, leased, or sublet premises connected to or operated
4.12 in conjunction with the hotel's purpose, or providing services thereat.

4.13 Subd. 19. **Incumbent employer.** "Incumbent employer" means a person who owns or
4.14 operates an enterprise subject to a change in control prior to the change in control.

4.15 Subd. 20. **Laid-off employee.** "Laid-off employee" means any employee who was
4.16 employed by the employer for six months or more in the 12 months preceding January 31,
4.17 2020, and whose most recent separation from actively performing services for hire occurred
4.18 after January 31, 2020, and was due to a public health directive, government shutdown
4.19 order, lack of business, a reduction in force, or other economic, nondisciplinary reason
4.20 related to the declared emergency.

4.21 Subd. 21. **Length of service.** "Length of service" means the total of all periods of time
4.22 during which an employee has actively been performing services for hire with the employer,
4.23 including periods of time when the employee was on leave or on vacation.

4.24 Subd. 22. **Person.** "Person" means an individual, corporation, partnership, limited
4.25 partnership, limited liability partnership, limited liability company, business trust, estate,
4.26 trust, association, joint venture, agency, instrumentality, or any other legal or commercial
4.27 entity, whether domestic or foreign.

4.28 Subd. 23. **Successor employer.** "Successor employer" means a person that owns or
4.29 operates an enterprise subject to a change in control after the change in control.

4.30 Subd. 24. **Transfer document.** "Transfer document" means the purchase agreement or
4.31 other documents creating a binding agreement to effect the change in control.

5.1 Sec. 2. **EMERGENCY REHIRE AND RETENTION OF LAID-OFF EMPLOYEES.**

5.2 Subdivision 1. **Rehire and recall requirements.** (a) An employer shall offer its laid-off
5.3 employees in writing, to their last known physical address, and by e-mail and text message
5.4 to the extent the employer possesses such information, all job positions that become available
5.5 after the effective date of this section for which the laid-off employees are qualified. A
5.6 laid-off employee is qualified for a position if the employee either:

5.7 (1) held the same or similar position at the enterprise at the time of the employee's most
5.8 recent separation from actively performing services for hire with the employer; or

5.9 (2) is or can be qualified for the position with the same training that would be provided
5.10 to a new employee hired into that position.

5.11 (b) The employer shall offer positions to laid-off employees in an order of preference
5.12 corresponding to paragraph (a), clauses (1) and (2). If more than one employee is entitled
5.13 to preference for a position, the employer shall offer the position to the laid-off employee
5.14 with the greatest length of service for the enterprise.

5.15 (c) A laid-off employee who is offered a position pursuant to this section shall be given
5.16 at least five business days in which to accept or decline the offer. An employer may make
5.17 simultaneous conditional offers of employment to laid-off employees, with a final offer of
5.18 employment conditioned on application of the priority system in paragraph (b).

5.19 (d) An employer that declines to recall a laid-off employee on the grounds of lack of
5.20 qualifications and instead hires someone other than a laid-off employee shall provide the
5.21 laid-off employee a written notice within 30 days identifying those hired in lieu of that
5.22 recall, along with all reasons for the decision.

5.23 (e) This section also applies in any of the following circumstances:

5.24 (1) the ownership of the employer changed after the separation from employment of a
5.25 laid-off employee but the enterprise is conducting the same or similar operations as before
5.26 the declared emergency;

5.27 (2) the form of organization of the employer changed after the declared emergency;

5.28 (3) substantially all of the assets of the employer were acquired by another entity which
5.29 conducts the same or similar operations using substantially the same assets; or

5.30 (4) the employer relocates the operations at which a laid-off employee was employed
5.31 before the declared emergency to a different location.

6.1 Subd. 2. Successor employer and retention requirements (a)(1) The incumbent
6.2 employer shall, within 15 days after the execution of a transfer document, provide to the
6.3 successor employer the name, address, date of hire, and employment occupation classification
6.4 of each eligible employee.

6.5 (2) The successor employer shall maintain a preferential hiring list of eligible employees
6.6 identified by the incumbent employer under clause (1), and shall be required to hire from
6.7 that list for a period beginning upon the execution of the transfer document and continuing
6.8 for six months after the enterprise is open to the public under the successor employer.

6.9 (3) If the successor employer extends an offer of employment to an eligible employee,
6.10 the successor employer shall retain written verification of that offer for at least three years
6.11 from the date the offer was made. The verification shall include the name, address, date of
6.12 hire, and employment occupation classification of each eligible employee.

6.13 (b)(1) A successor employer shall retain each eligible employee hired pursuant to this
6.14 subdivision for no fewer than 90 days following the eligible employee's employment
6.15 commencement date. During this 90-day transition employment period, eligible employees
6.16 shall be employed under the terms and conditions established by the successor employer
6.17 or as required by law. The successor employer shall provide eligible employees with a
6.18 written offer of employment. This offer shall remain open for at least five business days
6.19 from the date of the offer. A successor employer may make simultaneous conditional offers
6.20 of employment to eligible employees, with a final offer of employment conditioned on
6.21 application of the priority system set forth in clause (2).

6.22 (2) If, within the period established in paragraph (a), clause (2), the successor employer
6.23 determines that it requires fewer eligible employees than were required by the incumbent
6.24 employer, the successor employer shall retain eligible employees by seniority within each
6.25 job classification to the extent that comparable job classifications exist.

6.26 (3) During the 90-day transition employment period, the successor employer shall not
6.27 discharge without cause an eligible employee retained pursuant to this subdivision.

6.28 (4) At the end of the 90-day transition employment period, the successor employer shall
6.29 perform a written performance evaluation for each eligible employee retained pursuant to
6.30 this section. If the eligible employee's performance during the 90-day transition employment
6.31 period is satisfactory, the successor employer shall consider offering the eligible employee
6.32 continued employment under the terms and conditions established by the successor employer
6.33 or as required by law. The successor employer shall retain a record of the written performance
6.34 evaluation for a period of no fewer than three years.

7.1 (c)(1) The incumbent employer shall post written notice of the change in control at the
7.2 location of the affected enterprise within five business days following the execution of the
7.3 transfer document. Notice shall remain posted during any closure of the enterprise and for
7.4 six months after the enterprise is open to the public under the successor employer.

7.5 (2) Notice shall include but not be limited to the name of the incumbent employer and
7.6 its contact information, the name of the successor employer and its contact information,
7.7 and the effective date of the change in control.

7.8 (3) Notice shall be posted in a conspicuous place at the enterprise so as to be readily
7.9 viewed by eligible employees, other employees, and applicants for employment.

7.10 Subd. 3. **Employment protections.** No employer shall refuse to employ, terminate,
7.11 reduce in compensation, or otherwise take any adverse action against any employee for
7.12 seeking to enforce their rights under sections 1 to 4, by any lawful means, for participating
7.13 in proceedings related to these sections, opposing any practice prescribed by these sections,
7.14 or otherwise asserting rights under these sections. This subdivision shall also apply to any
7.15 employee who mistakenly, but in good faith, alleges noncompliance with these sections.

7.16 Subd. 4. **Collective bargaining rights.** (a) All of the provisions in sections 1 to 4 may
7.17 be waived in a valid collective bargaining agreement, but only if the waiver is explicitly set
7.18 forth in that agreement in clear and unambiguous terms. Unilateral implementation of terms
7.19 and conditions of employment by either party to a collective bargaining relationship shall
7.20 not constitute or be permitted as a waiver of all or any part of the provisions of sections 1
7.21 to 4.

7.22 (b) Nothing in sections 1 to 4 limits the right of employees to bargain collectively with
7.23 their employers through representatives of their own choosing to establish retention or
7.24 rehiring conditions more favorable to the employees than those required by these sections.

7.25 Sec. 3. **ENFORCEMENT AND COMPLIANCE.**

7.26 Subdivision 1. **Enforcement.** (a) An employee, including any eligible employee, may
7.27 file an action in the Minnesota District Court, or may file a complaint with the Department
7.28 of Labor and Industry, Labor Standards and Apprenticeship Division, against the employer,
7.29 or in the case of a violation of section 2, subdivision 2, incumbent employer or the successor
7.30 employer, for violations of section 2, and may be awarded any or all of the following, as
7.31 appropriate:

8.1 (1) hiring and reinstatement rights pursuant to section 2, with the 90-day transition
8.2 employment period not commencing until the eligible employee's employment
8.3 commencement date with the successor employer;

8.4 (2) front pay or back pay for each day during which the violation continues, which shall
8.5 be calculated at a rate of compensation not less than the highest of any of the following
8.6 rates:

8.7 (i) the average regular rate of pay received by the employee or eligible employee during
8.8 the last three years of that employee's employment in the same occupation classification;

8.9 (ii) the most recent regular rate received by the employee or eligible employee while
8.10 employed by the employer, incumbent employer, or successor employer; or

8.11 (iii) the regular rate received by the individual in the position during the time that the
8.12 employee or eligible employee should have been employed;

8.13 (3) value of the benefits the employee or eligible employee would have received under
8.14 the employer or successor employer's benefit plan; or

8.15 (4) in an action brought in the district court, a prevailing employee shall be awarded
8.16 reasonable attorneys' fees and costs.

8.17 (b) The Labor Standards and Apprenticeship Division shall investigate complaints filed
8.18 under this section, and if an employer, incumbent employer, or successor employer is found
8.19 to have violated section 2, the division shall determine and issue an award to an employee
8.20 pursuant to paragraph (a).

8.21 (c) No criminal penalties shall be imposed for a violation of section 2.

8.22 (d) This subdivision shall not be construed to limit a discharged employee or eligible
8.23 employee's right to pursue any other remedies available to an employee in law or equity.

8.24 Subd. 2. **Compliance.** The commissioner of labor and industry may issue a compliance
8.25 order under Minnesota Statutes, section 177.27, subdivision 4, requiring an employer to
8.26 comply with section 2.

8.27 Subd. 3. **Interaction with local law.** Nothing in this section shall prohibit a local
8.28 government agency from enacting ordinances that impose greater standards than, or establish
8.29 additional enforcement provisions to, those prescribed by this section.

8.30 Sec. 4. **CITATION.**

8.31 Sections 1 to 4 may be cited as the "Emergency Rehire and Retention Law."

9.1 Sec. 5. **APPROPRIATION.**

9.2 \$131,000 in fiscal year 2022 and \$27,000 in fiscal year 2023 are appropriated from the
9.3 general fund to the commissioner of labor and industry to implement sections 1 to 4. The
9.4 base for this appropriation in fiscal year 2024 and after is \$0.

9.5 **EFFECTIVE DATE.** This section is effective July 1, 2021.

9.6 Sec. 6. **EFFECTIVE DATES.**

9.7 Sections 1 to 4 are effective the day following final enactment and expire December 31,
9.8 2022.