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THE MINNESOTA LEGISLATIVE ROUNDUP: WHAT YOU DON'T KNOW ABOUT NEW EMPLOYMENT RELATED LEGISLATION CAN HURT YOU

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Some have characterized the 2007 Legislative Session as political theater. After a great deal of drama and a great many vetos, at midnight on May 21, 2007, the curtain was finally drawn on our state lawmakers, and the Capitol left dark until February, 2008. Despite the failure of many tax and funding bills, however, there were a number of statutory changes passed which affect employers, and both private and state contractors.

Our annual summary is designed to illuminate your path to understanding and complying with Minnesota's significant new employment and labor-related laws, most of which go into effect within the next six months. Without further ado, the following commentary provides an encore presentation of the most significant employment and labor-related laws passed during the first leg of the 85th legislative biennium. The first four statutes summarized below affect most employers, while the last four affect employer/contractors.

New Laws From 85th Legislative Session

1. **“Notice of Employee Rights.”** Under this law, effective on January 1, 2008, all private sector employers with twenty (20) or more employees will be required to provide new hires with written notification concerning employee rights and remedies under the Minnesota Personnel Records Review and Access statutes.
2. **Expansion of Protection Against Employer Retaliation for Victims of Violent Crimes.** Under current Minnesota law, employers are already required to provide employees who are victims of, or witnesses to, crimes, a reasonable amount of time off from work to attend criminal proceedings for purposes of giving testimony. Leave is also extended to the spouse or “next of kin” of the victim of a “heinous crime” (both of which are not defined by statute):
 - As amended, effective July 1, 2007, the law will continue to provide leave for spouses, but expands leave to a more inclusive group of employees characterized as “immediate family members.” Leave will be allowed in instances of “violent crime,” which replaces “heinous crime” formerly used. “Violent crime,” as defined in the amended statute, includes a much more expansive list of leave-qualifying crimes.



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Under the amended statute, employers continue to be prohibited from firing, disciplining, threatening, penalizing or otherwise discriminating against any employee who seeks to use or uses leave to attend a criminal proceeding.

3. Freedom to Breathe Act of 2007. The Minnesota Clean Indoor Air Act was amended, effective October 1, 2007, to “protect employees and the general public from the hazards of secondhand smoke.” The amended statute aspires to accomplish its goal of eliminating exposure to secondhand smoke in places of employment and public places by:

- Broadly defining “smoking” to include inhaling or exhaling of smoke, or carrying any lighted tobacco plant or product.
- Prohibiting “smoking” in virtually all places of business and enclosed public places, including, without limitation, factories, warehouses, offices, retail stores, restaurants, bars, banquet facilities, theaters, food stores, banks, financial institutions, lounges, restrooms and bowling facilities.
- Prohibiting “smoking” in vehicles (excluding heavy commercial vehicles) used in whole or in part for work purposes during hours of operation, if two or more people are present.

4. Obligation to Take Steps to Protect Against Disclosure of Social Security Numbers. This law, effective on July 1, 2007, imposes specific prohibitions on private employer use of employee and customer social security numbers, including, without limitation, the following prohibitions:

- Printing an individual's Social Security number on any card required for the individual to access products or services provided by the company.
- Use a number as the primary account identifier that is identical to or incorporates an individual's complete Social Security number.

Employers are also obligated to restrict access to individuals' Social Security numbers it holds so that only employees who require the numbers in order to perform their job duties have access to the numbers, except where otherwise authorized by federal law.

5. High Pressure Piping. The Minnesota construction code was modified, effective on July 1, 2007 or December 1, 2007, depending on the specific provision, to incorporate various construction code enforcement and licensing functions of the Department of Labor and Industry. The modifications affect the High Pressure Piping Industry as follows:

- The authority to craft minimum standards (as opposed to oversight authority) specific to the Minnesota pipefitting industry, as well as the authority to adopt rules related to licensing of pipefitters, has been re-allocated from the Department of Labor and Industry to a newly-created (and yet to be staffed) Board of High Pressure Piping Systems.
- New definitions have been added that directly impact how employers in this industry distinguish between apprentices, journeymen and master pipefitters (referred to as “pipefitter apprentice,” “journeyman high pressure pipefitter” and “contracting high pressure pipefitter”).
- Each “contracting high pressure pipefitter” or “journeyman high pressure pipefitter” will be required to register his/her license with the Commissioner of the Department of Labor and Industry.
- 2-to-1 Ratio: Each “contracting high pressure pipefitter” or “journeyman high pressure pipefitter” is prohibited from supervising more than two (2) “pipefitter apprentices” or other registered unlicensed individual.

6. “Best Value” Procurement System for State Government Construction. Various statutes related to state government construction project procurement (including construction, building, alteration, improvement or repair service contracts) have been amended, effective on July 1, 2007 or December 1, 2007, depending on the particular provision, to create an across-the-board alternative approach to the traditional low-bid system of project procurement.

The new alternative approach, characterized as a “best value” approach, allows all state building and construction contracts entered into by or under the supervision of the Commissioner of Administration, or an agency for which competitive bids or proposals are required, to be awarded (as an alternative to the low-bidder) to contractors who do not necessarily present the lowest bid or proposal, but instead offer the “best value,” based upon consideration of a number of price and performance factors, such as the following:

- The quality of the contractor’s performance on previous projects.
- The timeliness of the contractor’s performance of previous projects.
- The level of customer satisfaction with the contractor’s performance on previous projects.
- The contractor’s ability to minimize change orders.
- The individual qualifications of the contractor’s key personnel.

7. Modified Insurance Requirements and New Reporting Obligations for Statutory “Residential Building Contractors” and “Residential Remodelers.” This statute requires each statutory “Residential Building Contractor” and “Residential Remodeler,” effective August 1, 2007, to:

- Have and maintain commercial general liability insurance (that includes premises and operations, and products and completed operations coverage) with at least \$100,000 per occurrence, \$300,000 aggregate for bodily injury; and
- Have and maintain property damage insurance with limits of at least \$25,000; or
- Have and maintain a policy with a single limit for bodily injury and property damage of \$300,000 per occurrence and \$300,000 aggregate limits.

Additionally, each “Residential Building Contractor” and “Residential Remodeler” will be required to file and maintain a certificate of insurance with the Commissioner of Commerce, stating that the insurance cannot be cancelled without the insurer first giving fifteen (15) days written notice of cancellation to the Commissioner of Commerce

8. New Prevailing Wage Recordkeeping and Enforcement Remedies and Independent Contractor Certification Requirements. Chapter 135 of the 2007 Minnesota Session Laws incorporates new provisions on prevailing wage compliance, effective August 1, 2007, and on independent contractor registration, effective July 1, 2008:

- Contractor/employers must submit prevailing wage payroll records weekly and maintain records longer.
- Prevailing wage enforcement is expanded by the addition of direct Minnesota Department of Labor enforcement authority, mandatory referral of violations to local district attorneys and a private lawsuit option for employees for prevailing wage violations.
- Individual independent contractors now must register with the Department of Labor, demonstrate compliance with the IRS independent contractor test and obtain a certificate, now required to work for a contractor.

For more information concerning the scope and enforcement of these new laws, and on employer risk management and compliance planning related to any employment or labor-related law, please feel free to contact Attorney Bryan T. Symes, or any other Seaton, Beck & Peters, P.A. attorney, at (952) 896-1700. We are happy to offer a free initial courtesy telephone discussion of these issues to any employer. We look forward to hearing from you!

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