

188.15 **ARTICLE 11**

188.16 **EMERGENCY REHIRE AND RETENTION**

188.17 Section 1. **DEFINITIONS.**

188.18 Subdivision 1. **Applicability.** For the purposes of sections 1 to 4, the following terms
188.19 have the meanings given.

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

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

188.24 Subd. 4. **Airport.** "Airport" means any area of land or water, except a restricted landing
188.25 area, which is designed for the landing and takeoff of aircraft, whether or not facilities are
188.26 provided for the shelter, surfacing, or repair of aircraft, or for receiving or discharging
188.27 passengers or cargo, and all appurtenant areas used or suitable for airport buildings or other
188.28 airport facilities, and all appurtenant rights-of-way, whether heretofore or hereafter
188.29 established.

188.30 Subd. 5. **Airport authority.** "Airport authority" means an authority created pursuant to
188.31 Minnesota Statutes, section 360.0426.

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

189.3 (1) information management;

189.4 (2) building and property management;

189.5 (3) civil services;

189.6 (4) procurement and logistics management; and

189.7 (5) legal services.

189.8 Subd. 7. **Airport hospitality operation.** (a) "Airport hospitality operation" means a
189.9 business that:

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

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

189.14 (b) Airport hospitality operation does not include an air carrier certificated by the Federal
189.15 Aviation Administration.

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

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

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

189.22 (3) security;

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

189.24 (5) ground-handling of aircraft;

189.25 (6) aircraft cleaning and sanitization functions; or

189.26 (7) airport authority.

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

189.29 Subd. 9. **Building service.** "Building service" means janitorial, building maintenance,
189.30 or security services.

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

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

190.8 Subd. 12. **Declared emergency.** "Declared emergency" means a national security or
190.9 peacetime emergency declared by the governor under Minnesota Statutes, section 12.31, a
190.10 local emergency declared by the mayor of a municipality or the chair of a county board of
190.11 commissioners under Minnesota Statutes, section 12.29, a federal public health emergency
190.12 declared by the secretary of the federal Department of Health and Human Services, or a
190.13 major disaster or national emergency declared by the president.

190.14 Subd. 13. **Eligible employee.** (a) "Eligible employee" means an individual:
190.15 (1) whose primary place of employment is at an enterprise subject to a change in control;
190.16 (2) who is employed directly by the incumbent employer, or by an employer who has
190.17 contracted with the incumbent employer to provide services at the enterprise subject to a
190.18 change in control; and
190.19 (3) who has worked for the incumbent employer for at least one month prior to the
190.20 execution of the transfer document.

190.21 (b) Eligible employee does not include a managerial, supervisory, or confidential
190.22 employee.

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

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

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

190.31 Subd. 17. **Event center.** (a) "Event center" means a publicly or privately owned structure
190.32 of more than 50,000 square feet or 2,000 seats that is used for the purposes of public

191.1 performances, sporting events, business meetings, or similar events, and includes concert
191.2 halls, stadiums, sports arenas, racetracks, coliseums, and convention centers.

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

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

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

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

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

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

191.17 Subd. 20. **Laid-off employee.** "Laid-off employee" means any employee who was
191.18 employed by the employer for six months or more in the 12 months preceding January 31,
191.19 2020, and whose most recent separation from actively performing services for hire occurred
191.20 after January 31, 2020, and was due to a public health directive, government shutdown
191.21 order, lack of business, a reduction in force, or other economic, nondisciplinary reason
191.22 related to the declared emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

193.30 (4) At the end of the 90-day transition employment period, the successor employer shall
193.31 perform a written performance evaluation for each eligible employee retained pursuant to
193.32 this section. If the eligible employee's performance during the 90-day transition employment
193.33 period is satisfactory, the successor employer shall consider offering the eligible employee
193.34 continued employment under the terms and conditions established by the successor employer

194.1 or as required by law. The successor employer shall retain a record of the written performance
194.2 evaluation for a period of no fewer than three years.

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

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

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

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

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

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

194.27 Sec. 3. **ENFORCEMENT AND COMPLIANCE.**

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

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

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

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

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

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

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

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

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

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

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

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

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

195.30 Sec. 4. **CITATION.**

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

196.1 **Sec. 5. EFFECTIVE DATES.**

196.2 Sections 1 to 4 are effective the day following final enactment and expire December 31,

196.3 2022.