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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-SECOND SESSION

H. F. No. 1200

02/18/2021 Authored by Richardson; Jordan; Olson, L.; Hortman; Stephenson and others
The bill was read for the first time and referred to the Committee on Early Childhood Finance and Policy
02/25/2021 Adoption of Report: Re-referred to the Committee on State Government Finance and Elections
03/04/2021 Adoption of Report: Amended and re-referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to employment; providing for paid family, pregnancy, bonding, and
1.3 applicant's serious medical condition benefits; regulating and requiring certain
1.4 employment leaves; classifying certain data; authorizing rulemaking; appropriating
1.5 money; amending Minnesota Statutes 2020, sections 13.719, by adding a
1.6 subdivision; 177.27, subdivision 4; 181.032; 256J.561, by adding a subdivision;
1.7 256J.95, subdivisions 3, 11; 256P.01, subdivision 3; 268.19, subdivision 1;
1.8 proposing coding for new law as Minnesota Statutes, chapter 268B.

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

1.10 ARTICLE 1

1.11 FAMILY AND MEDICAL BENEFITS

1.12 Section 1. Minnesota Statutes 2020, section 13.719, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 7. Family and medical insurance data. (a) For the purposes of this subdivision,
1.15 the terms used have the meanings given them in section 268B.01.

1.16 (b) Data on applicants, family members, or employers under chapter 268B are private
1.17 or nonpublic data, provided that the department may share data collected from applicants
1.18 with employers or health care providers to the extent necessary to meet the requirements
1.19 of chapter 268B or other applicable law.

1.20 (c) The department and the Department of Labor and Industry may share data classified
1.21 under paragraph (b) to the extent necessary to meet the requirements of chapter 268B or
1.22 the Department of Labor and Industry's enforcement authority over chapter 268B, as provided
1.23 in section 177.27.

2.1 Sec. 2. Minnesota Statutes 2020, section 177.27, subdivision 4, is amended to read:

2.2 Subd. 4. **Compliance orders.** The commissioner may issue an order requiring an
2.3 employer to comply with sections 177.21 to 177.435, 181.02, 181.03, 181.031, 181.032,
2.4 181.101, 181.11, 181.13, 181.14, 181.145, 181.15, 181.172, paragraph (a) or (d), 181.275,
2.5 subdivision 2a, 181.722, 181.79, ~~and~~ 181.939 to 181.943, 268B.09, subdivisions 1 to 6, and
2.6 268B.14, subdivision 3, or with any rule promulgated under section 177.28. The
2.7 commissioner shall issue an order requiring an employer to comply with sections 177.41
2.8 to 177.435 if the violation is repeated. For purposes of this subdivision only, a violation is
2.9 repeated if at any time during the two years that preceded the date of violation, the
2.10 commissioner issued an order to the employer for violation of sections 177.41 to 177.435
2.11 and the order is final or the commissioner and the employer have entered into a settlement
2.12 agreement that required the employer to pay back wages that were required by sections
2.13 177.41 to 177.435. The department shall serve the order upon the employer or the employer's
2.14 authorized representative in person or by certified mail at the employer's place of business.
2.15 An employer who wishes to contest the order must file written notice of objection to the
2.16 order with the commissioner within 15 calendar days after being served with the order. A
2.17 contested case proceeding must then be held in accordance with sections 14.57 to 14.69.
2.18 If, within 15 calendar days after being served with the order, the employer fails to file a
2.19 written notice of objection with the commissioner, the order becomes a final order of the
2.20 commissioner.

2.21 Sec. 3. Minnesota Statutes 2020, section 181.032, is amended to read:

2.22 **181.032 REQUIRED STATEMENT OF EARNINGS BY EMPLOYER; NOTICE**
2.23 **TO EMPLOYEE.**

2.24 (a) At the end of each pay period, the employer shall provide each employee an earnings
2.25 statement, either in writing or by electronic means, covering that pay period. An employer
2.26 who chooses to provide an earnings statement by electronic means must provide employee
2.27 access to an employer-owned computer during an employee's regular working hours to
2.28 review and print earnings statements, and must make statements available for review or
2.29 printing for a period of three years.

2.30 (b) The earnings statement may be in any form determined by the employer but must
2.31 include:

2.32 (1) the name of the employee;

(2) the rate or rates of pay and basis thereof, including whether the employee is paid by hour, shift, day, week, salary, piece, commission, or other method;

(3) allowances, if any, claimed pursuant to permitted meals and lodging;

(4) the total number of hours worked by the employee unless exempt from chapter 177;

(5) the total amount of gross pay earned by the employee during that period;

(6) a list of deductions made from the employee's pay;

(7) any amount deducted by the employer under section 268B.14, subdivision 3, and the amount paid by the employer based on the employee's wages under section 268B.14, subdivision 1;

~~(7)~~ (8) the net amount of pay after all deductions are made;

~~(8)~~ (9) the date on which the pay period ends;

~~(9)~~ (10) the legal name of the employer and the operating name of the employer if different from the legal name;

~~(10)~~ (11) the physical address of the employer's main office or principal place of business, and a mailing address if different; and

~~(11)~~ (12) the telephone number of the employer.

(c) An employer must provide earnings statements to an employee in writing, rather than by electronic means, if the employer has received at least 24 hours notice from an employee that the employee would like to receive earnings statements in written form. Once an employer has received notice from an employee that the employee would like to receive earnings statements in written form, the employer must comply with that request on an ongoing basis.

(d) At the start of employment, an employer shall provide each employee a written notice containing the following information:

(1) the rate or rates of pay and basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission, or other method, and the specific application of any additional rates;

(2) allowances, if any, claimed pursuant to permitted meals and lodging;

(3) paid vacation, sick time, or other paid time-off accruals and terms of use;

(4) the employee's employment status and whether the employee is exempt from minimum wage, overtime, and other provisions of chapter 177, and on what basis;

4.1 (5) a list of deductions that may be made from the employee's pay;

4.2 (6) the number of days in the pay period, the regularly scheduled pay day, and the pay
4.3 day on which the employee will receive the first payment of wages earned;

4.4 (7) the legal name of the employer and the operating name of the employer if different
4.5 from the legal name;

4.6 (8) the physical address of the employer's main office or principal place of business, and
4.7 a mailing address if different; and

4.8 (9) the telephone number of the employer.

4.9 (e) The employer must keep a copy of the notice under paragraph (d) signed by each
4.10 employee acknowledging receipt of the notice. The notice must be provided to each employee
4.11 in English. The English version of the notice must include text provided by the commissioner
4.12 that informs employees that they may request, by indicating on the form, the notice be
4.13 provided in a particular language. If requested, the employer shall provide the notice in the
4.14 language requested by the employee. The commissioner shall make available to employers
4.15 the text to be included in the English version of the notice required by this section and assist
4.16 employers with translation of the notice in the languages requested by their employees.

4.17 (f) An employer must provide the employee any written changes to the information
4.18 contained in the notice under paragraph (d) prior to the date the changes take effect.

4.19 Sec. 4. Minnesota Statutes 2020, section 268.19, subdivision 1, is amended to read:

4.20 Subdivision 1. **Use of data.** (a) Except as provided by this section, data gathered from
4.21 any person under the administration of the Minnesota Unemployment Insurance Law are
4.22 private data on individuals or nonpublic data not on individuals as defined in section 13.02,
4.23 subdivisions 9 and 12, and may not be disclosed except according to a district court order
4.24 or section 13.05. A subpoena is not considered a district court order. These data may be
4.25 disseminated to and used by the following agencies without the consent of the subject of
4.26 the data:

4.27 (1) state and federal agencies specifically authorized access to the data by state or federal
4.28 law;

4.29 (2) any agency of any other state or any federal agency charged with the administration
4.30 of an unemployment insurance program;

4.31 (3) any agency responsible for the maintenance of a system of public employment offices
4.32 for the purpose of assisting individuals in obtaining employment;

5.1 (4) the public authority responsible for child support in Minnesota or any other state in
5.2 accordance with section 256.978;

5.3 (5) human rights agencies within Minnesota that have enforcement powers;

5.4 (6) the Department of Revenue to the extent necessary for its duties under Minnesota
5.5 laws;

5.6 (7) public and private agencies responsible for administering publicly financed assistance
5.7 programs for the purpose of monitoring the eligibility of the program's recipients;

5.8 (8) the Department of Labor and Industry and the Commerce Fraud Bureau in the
5.9 Department of Commerce for uses consistent with the administration of their duties under
5.10 Minnesota law;

5.11 (9) the Department of Human Services and the Office of Inspector General and its agents
5.12 within the Department of Human Services, including county fraud investigators, for
5.13 investigations related to recipient or provider fraud and employees of providers when the
5.14 provider is suspected of committing public assistance fraud;

5.15 (10) local and state welfare agencies for monitoring the eligibility of the data subject
5.16 for assistance programs, or for any employment or training program administered by those
5.17 agencies, whether alone, in combination with another welfare agency, or in conjunction
5.18 with the department or to monitor and evaluate the statewide Minnesota family investment
5.19 program by providing data on recipients and former recipients of Supplemental Nutrition
5.20 Assistance Program (SNAP) benefits, cash assistance under chapter 256, 256D, 256J, or
5.21 256K, child care assistance under chapter 119B, or medical programs under chapter 256B
5.22 or 256L or formerly codified under chapter 256D;

5.23 (11) local and state welfare agencies for the purpose of identifying employment, wages,
5.24 and other information to assist in the collection of an overpayment debt in an assistance
5.25 program;

5.26 (12) local, state, and federal law enforcement agencies for the purpose of ascertaining
5.27 the last known address and employment location of an individual who is the subject of a
5.28 criminal investigation;

5.29 (13) the United States Immigration and Customs Enforcement has access to data on
5.30 specific individuals and specific employers provided the specific individual or specific
5.31 employer is the subject of an investigation by that agency;

5.32 (14) the Department of Health for the purposes of epidemiologic investigations;

(15) the Department of Corrections for the purposes of case planning and internal research for preprobation, probation, and postprobation employment tracking of offenders sentenced to probation and preconfinement and postconfinement employment tracking of committed offenders;

(16) the state auditor to the extent necessary to conduct audits of job opportunity building zones as required under section 469.3201; ~~and~~

(17) the Office of Higher Education for purposes of supporting program improvement, system evaluation, and research initiatives including the Statewide Longitudinal Education Data System; and

(18) the Family and Medical Benefits Division of the Department of Employment and Economic Development to be used as necessary to administer chapter 268B.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation under section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except under statute or district court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Data gathered by the department in the administration of the Minnesota unemployment insurance program must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

Sec. 5. **[268B.01] DEFINITIONS.**

Subdivision 1. **Scope.** For the purposes of this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Applicant.** "Applicant" means an individual applying for leave with benefits under this chapter.

Subd. 3. **Applicant's average weekly wage.** "Applicant's average weekly wage" means an amount equal to the applicant's high quarter wage credits divided by 13.

Subd. 4. **Base period.** (a) "Base period," unless otherwise provided in this subdivision, means the most recent four completed calendar quarters before the effective date of an applicant's application for family or medical leave benefits if the application has an effective date occurring after the month following the most recent completed calendar quarter. The base period under this paragraph is as follows:

7.1	<u>If the application for family or medical leave</u>	
7.2	<u>benefits is effective on or between these</u>	
7.3	<u>dates:</u>	<u>The base period is the prior:</u>
7.4	<u>February 1 to March 31</u>	<u>January 1 to December 31</u>
7.5	<u>May 1 to June 30</u>	<u>April 1 to March 31</u>
7.6	<u>August 1 to September 30</u>	<u>July 1 to June 30</u>
7.7	<u>November 1 to December 31</u>	<u>October 1 to September 30</u>

7.8 (b) If an application for family or medical leave benefits has an effective date that is
 7.9 during the month following the most recent completed calendar quarter, then the base period
 7.10 is the first four of the most recent five completed calendar quarters before the effective date
 7.11 of an applicant's application for family or medical leave benefits. The base period under
 7.12 this paragraph is as follows:

7.13	<u>If the application for family or medical leave</u>	
7.14	<u>benefits is effective on or between these</u>	
7.15	<u>dates:</u>	<u>The base period is the prior:</u>
7.16	<u>January 1 to January 31</u>	<u>October 1 to September 30</u>
7.17	<u>April 1 to April 30</u>	<u>January 1 to December 31</u>
7.18	<u>July 1 to July 31</u>	<u>April 1 to March 31</u>
7.19	<u>October 1 to October 31</u>	<u>July 1 to June 30</u>

7.20 (c) Regardless of paragraph (a), a base period of the first four of the most recent five
 7.21 completed calendar quarters must be used if the applicant would have more wage credits
 7.22 under that base period than under a base period of the four most recent completed calendar
 7.23 quarters.

7.24 (d) If the applicant has insufficient wage credits to establish a benefit account under a
 7.25 base period of the four most recent completed calendar quarters, or a base period of the first
 7.26 four of the most recent five completed calendar quarters, but during either base period the
 7.27 applicant received workers' compensation for temporary disability under chapter 176 or a
 7.28 similar federal law or similar law of another state, or if the applicant whose own serious
 7.29 illness caused a loss of work for which the applicant received compensation for loss of
 7.30 wages from some other source, the applicant may request a base period as follows:

7.31 (1) if an applicant was compensated for a loss of work of seven to 13 weeks during a
 7.32 base period referred to in paragraph (a) or (b), then the base period is the first four of the
 7.33 most recent six completed calendar quarters before the effective date of the application for
 7.34 family or medical leave benefits;

7.35 (2) if an applicant was compensated for a loss of work of 14 to 26 weeks during a base
 7.36 period referred to in paragraph (a) or (b), then the base period is the first four of the most

8.1 recent seven completed calendar quarters before the effective date of the application for
8.2 family or medical leave benefits;

8.3 (3) if an applicant was compensated for a loss of work of 27 to 39 weeks during a base
8.4 period referred to in paragraph (a) or (b), then the base period is the first four of the most
8.5 recent eight completed calendar quarters before the effective date of the application for
8.6 family or medical leave benefits; and

8.7 (4) if an applicant was compensated for a loss of work of 40 to 52 weeks during a base
8.8 period referred to in paragraph (a) or (b), then the base period is the first four of the most
8.9 recent nine completed calendar quarters before the effective date of the application for
8.10 family or medical leave benefits.

8.11 Subd. 5. **Benefit.** "Benefit" or "benefits" means monetary payments under this chapter
8.12 associated with qualifying bonding, family care, pregnancy, serious health condition,
8.13 qualifying exigency, or safety leave events, unless otherwise indicated by context.

8.14 Subd. 6. **Benefit account.** "Benefit account" means a benefit account established under
8.15 section 268B.04.

8.16 Subd. 7. **Benefit year.** "Benefit year" means the period of 52 calendar weeks beginning
8.17 the date a benefit account under section 268B.04 is effective. For a benefit account established
8.18 effective any January 1, April 1, July 1, or October 1, the benefit year will be a period of
8.19 53 calendar weeks.

8.20 Subd. 8. **Bonding.** "Bonding" means time spent by an applicant who is a biological,
8.21 adoptive, or foster parent with a biological, adopted, or foster child in conjunction with the
8.22 child's birth, adoption, or placement.

8.23 Subd. 9. **Calendar day.** "Calendar day" or "day" means a fixed 24-hour period
8.24 corresponding to a single calendar date.

8.25 Subd. 10. **Calendar quarter.** "Calendar quarter" means the period of three consecutive
8.26 calendar months ending on March 31, June 30, September 30, or December 31.

8.27 Subd. 11. **Calendar week.** "Calendar week" has the same meaning as "week" under
8.28 subdivision 46.

8.29 Subd. 12. **Commissioner.** "Commissioner" means the commissioner of employment
8.30 and economic development, unless otherwise indicated by context.

8.31 Subd. 13. **Covered employment.** (a) "Covered employment" means performing services
8.32 of whatever nature, unlimited by the relationship of master and servant as known to the

9.1 common law, or any other legal relationship performed for wages or under any contract
9.2 calling for the performance of services, written or oral, express or implied.

9.3 (b) "Employment" includes an individual's entire service performed within or without
9.4 or both within and without this state, if:

9.5 (1) the service is localized in this state; or

9.6 (2) the service is not localized in any state, but some of the service is performed in this
9.7 state and:

9.8 (i) the base of operations of the employee is in the state, or if there is no base of
9.9 operations, then the place from which such service is directed or controlled is in this state;
9.10 or

9.11 (ii) the base of operations or place from which such service is directed or controlled is
9.12 not in any state in which some part of the service is performed, but the individual's residence
9.13 is in this state.

9.14 (c) "Covered employment" does not include:

9.15 (1) a self-employed individual; or

9.16 (2) an independent contractor.

9.17 Subd. 14. **Department.** "Department" means the Department of Employment and
9.18 Economic Development, unless otherwise indicated by context.

9.19 Subd. 15. **Employee.** (a) "Employee" means an individual who is in the employment of
9.20 an employer.

9.21 (b) Employee does not include employees of the United States of America.

9.22 Subd. 16. **Employer.** (a) "Employer" means:

9.23 (1) any person, type of organization, or entity, including any partnership, association,
9.24 trust, estate, joint stock company, insurance company, limited liability company, or
9.25 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or
9.26 the legal representative of a deceased person, having any individual in covered employment;

9.27 (2) the state, statewide system, and state agencies; and

9.28 (3) any local government entity, including but not limited to a county, city, town,
9.29 municipal corporation, quasimunicipal corporation, or political subdivision.

9.30 (b) Employer does not include:

10.1 (1) the United States of America; or

10.2 (2) a self-employed individual who has elected and been approved for coverage under
10.3 section 268B.11 with regard to the self-employed individual's own coverage and benefits.

10.4 Subd. 17. **Estimated self-employment income.** "Estimated self-employment income"
10.5 means a self-employed individual's average net earnings from self-employment in the two
10.6 most recent taxable years. For a self-employed individual who had net earnings from
10.7 self-employment in only one of the years, the individual's estimated self-employment income
10.8 equals the individual's net earnings from self-employment in the year in which the individual
10.9 had net earnings from self-employment.

10.10 Subd. 18. **Family and medical benefit insurance account.** "Family and medical benefit
10.11 insurance account" means the family and medical benefit insurance account in the special
10.12 revenue fund in the state treasury under section 268B.02.

10.13 Subd. 19. **Family and medical benefit insurance enforcement account.** "Family and
10.14 medical benefit insurance enforcement account" means the family and medical benefit
10.15 insurance enforcement account in the state treasury under section 268B.185.

10.16 Subd. 20. **Family benefit program.** "Family benefit program" means the program
10.17 administered under this chapter for the collection of premiums and payment of benefits
10.18 related to family care, bonding, safety leave, and leave related to a qualifying exigency.

10.19 Subd. 21. **Family care.** "Family care" means an applicant caring for a family member
10.20 with a serious health condition or caring for a family member who is a covered service
10.21 member.

10.22 Subd. 22. **Family member.** (a) "Family member" means an employee's child, adult
10.23 child, spouse, sibling, parent, parent-in-law, grandchild, grandparent, stepparent, member
10.24 of the employee's household, or domestic partner.

10.25 (b) For the purposes of this chapter, a child includes a stepchild, biological, adopted, or
10.26 foster child of the employee, or a child for whom the employee is standing in loco parentis.

10.27 (c) For the purposes of this chapter, a grandchild includes a step-grandchild, biological,
10.28 adopted, or foster grandchild of the employee.

10.29 (d) For the purposes of this chapter, an individual is a member of the employee's
10.30 household if the individual has resided at the same address as the employee for at least one
10.31 year as of the first day of leave under this chapter.

10.32 Subd. 23. **Health care provider.** "Health care provider" means:

11.1 (1) an individual who is licensed, certified, or otherwise authorized under law to practice
11.2 in the individual's scope of practice as a physician, osteopath, surgeon, or advanced practice
11.3 registered nurse; or

11.4 (2) any other individual determined by the commissioner by rule, in accordance with
11.5 the rulemaking procedures in the Administrative Procedure Act, to be capable of providing
11.6 health care services.

11.7 Subd. 24. **High quarter.** "High quarter" means the calendar quarter in an applicant's
11.8 base period with the highest amount of wage credits.

11.9 Subd. 25. **Incapacity.** "Incapacity" means inability to perform regular work, attend
11.10 school, or perform other regular daily activities due to a serious health condition, treatment
11.11 therefore, or recovery therefrom.

11.12 Subd. 26. **Independent contractor.** (a) If there is an existing specific test or definition
11.13 for independent contractor in Minnesota statute or rule applicable to an occupation or sector
11.14 as of the date of enactment of this chapter, that test or definition shall apply to that occupation
11.15 or sector for purposes of this chapter. If there is not an existing test or definition as described,
11.16 the definition for independent contractor shall be as provided in this subdivision.

11.17 (b) An individual is an independent contractor and not an employee of the person for
11.18 whom the individual is performing services in the course of the person's trade, business,
11.19 profession, or occupation only if:

11.20 (1) the individual maintains a separate business with the individual's own office,
11.21 equipment, materials, and other facilities;

11.22 (2) the individual:

11.23 (i) holds or has applied for a federal employer identification number; or

11.24 (ii) has filed business or self-employment income tax returns with the federal Internal
11.25 Revenue Service if the individual has performed services in the previous year;

11.26 (3) the individual is operating under contract to perform the specific services for the
11.27 person for specific amounts of money and under which the individual controls the means
11.28 of performing the services;

11.29 (4) the individual is incurring the main expenses related to the services that the individual
11.30 is performing for the person under the contract;

12.1 (5) the individual is responsible for the satisfactory completion of the services that the
12.2 individual has contracted to perform for the person and is liable for a failure to complete
12.3 the services;

12.4 (6) the individual receives compensation from the person for the services performed
12.5 under the contract on a commission or per-job or competitive bid basis and not on any other
12.6 basis;

12.7 (7) the individual may realize a profit or suffer a loss under the contract to perform
12.8 services for the person;

12.9 (8) the individual has continuing or recurring business liabilities or obligations; and

12.10 (9) the success or failure of the individual's business depends on the relationship of
12.11 business receipts to expenditures.

12.12 (c) For the purposes of this chapter, an insurance producer, as defined in section 60K.31,
12.13 subdivision 6, is an independent contractor of an insurance company, as defined in section
12.14 60A.02, subdivision 4, unless the insurance producer and insurance company agree otherwise.

12.15 Subd. 27. **Inpatient care.** "Inpatient care" means an overnight stay in a hospital, hospice,
12.16 or residential medical care facility, including any period of incapacity, or any subsequent
12.17 treatment in connection with such inpatient care.

12.18 Subd. 28. **Maximum weekly benefit amount.** "Maximum weekly benefit amount"
12.19 means the state's average weekly wage as calculated under section 268.035, subdivision 23.

12.20 Subd. 29. **Medical benefit program.** "Medical benefit program" means the program
12.21 administered under this chapter for the collection of premiums and payment of benefits
12.22 related to an applicant's serious health condition or pregnancy.

12.23 Subd. 30. **Net earnings from self-employment.** "Net earnings from self-employment"
12.24 has the meaning given in section 1402 of the Internal Revenue Code, as defined in section
12.25 290.01, subdivision 31.

12.26 Subd. 31. **Pregnancy.** "Pregnancy" means prenatal care or incapacity due to pregnancy
12.27 or recovery from childbirth, still birth, miscarriage, or related health conditions.

12.28 Subd. 32. **Qualifying exigency.** (a) "Qualifying exigency" means a need arising out of
12.29 a military member's active duty service or notice of an impending call or order to active
12.30 duty in the United States armed forces, including providing for the care or other needs of
12.31 the family member's child or other dependent, making financial or legal arrangements for
12.32 the family member, attending counseling, attending military events or ceremonies, spending

13.1 time with the family member during a rest and recuperation leave or following return from
13.2 deployment, or making arrangements following the death of the military member.

13.3 (b) For the purposes of this chapter, a "military member" means a current or former
13.4 member of the United States armed forces, including a member of the National Guard or
13.5 reserves, who, except for a deceased military member, is a resident of the state and is a
13.6 family member of the employee taking leave related to the qualifying exigency.

13.7 Subd. 33. **Safety leave.** "Safety leave" means leave from work because of domestic
13.8 abuse, sexual assault, or stalking of the employee or employee's family member, provided
13.9 the leave is to:

13.10 (1) seek medical attention related to the physical or psychological injury or disability
13.11 caused by domestic abuse, sexual assault, or stalking;

13.12 (2) obtain services from a victim services organization;

13.13 (3) obtain psychological or other counseling;

13.14 (4) seek relocation due to the domestic abuse, sexual assault, or stalking; or

13.15 (5) seek legal advice or take legal action, including preparing for or participating in any
13.16 civil or criminal legal proceeding related to, or resulting from, the domestic abuse, sexual
13.17 assault, or stalking.

13.18 Subd. 34. **Self-employed individual.** "Self-employed individual" means a resident of
13.19 the state who, in one of the two taxable years preceding the current calendar year, derived
13.20 at least \$10,000 in net earnings from self-employment from an entity other than an S
13.21 corporation for the performance of services in this state.

13.22 Subd. 35. **Self-employment premium base.** "Self-employment premium base" means
13.23 the lesser of:

13.24 (1) a self-employed individual's estimated self-employment income for the calendar year
13.25 plus the individual's self-employment wages in the calendar year; or

13.26 (2) the maximum earnings subject to the FICA Old-Age, Survivors, and Disability
13.27 Insurance tax in the taxable year.

13.28 Subd. 36. **Self-employment wages.** "Self-employment wages" means the amount of
13.29 wages that a self-employed individual earned in the calendar year from an entity from which
13.30 the individual also received net earnings from self-employment.

13.31 Subd. 37. **Serious health condition.** (a) "Serious health condition" means a physical or
13.32 mental illness, injury, impairment, condition, or substance use disorder that involves:

- 14.1 (1) at-home care or inpatient care in a hospital, hospice, or residential medical care
14.2 facility, including any period of incapacity; or
- 14.3 (2) continuing treatment or supervision by a health care provider which includes any
14.4 one or more of the following:
- 14.5 (i) a period of incapacity of more than three consecutive, full calendar days, and any
14.6 subsequent treatment or period of incapacity relating to the same condition, that also involves:
- 14.7 (A) treatment two or more times by a health care provider or by a provider of health
14.8 care services under orders of, or on referral by, a health care provider; or
- 14.9 (B) treatment by a health care provider on at least one occasion that results in a regimen
14.10 of continuing treatment under the supervision of the health care provider;
- 14.11 (ii) a period of incapacity due to pregnancy, or for prenatal care;
- 14.12 (iii) a period of incapacity or treatment for a chronic health condition that:
- 14.13 (A) requires periodic visits, defined as at least twice a year, for treatment by a health
14.14 care provider or under orders of, or on referral by, a health care provider;
- 14.15 (B) continues over an extended period of time, including recurring episodes of a single
14.16 underlying condition; and
- 14.17 (C) may cause episodic rather than continuing periods of incapacity;
- 14.18 (iv) a period of incapacity which is permanent or long term due to a condition for which
14.19 treatment may not be effective. The employee or family member must be under the continuing
14.20 supervision of, but need not be receiving active treatment by, a health care provider; or
- 14.21 (v) a period of absence to receive multiple treatments, including any period of recovery
14.22 from the treatments, by a health care provider or by a provider of health care services under
14.23 orders of, or on referral by, a health care provider, for:
- 14.24 (A) restorative surgery after an accident or other injury; or
- 14.25 (B) a condition that would likely result in a period of incapacity of more than three
14.26 consecutive, full calendar days in the absence of medical intervention or treatment.
- 14.27 (b) For the purposes of paragraph (a), clauses (1) and (2), treatment by a health care
14.28 provider means an in-person visit or telemedicine visit with a health care provider, or by a
14.29 provider of health care services under orders of, or on referral by, a health care provider.
- 14.30 (c) For the purposes of paragraph (a), treatment includes but is not limited to examinations
14.31 to determine if a serious health condition exists and evaluations of the condition.

15.1 (d) Absences attributable to incapacity under paragraph (a), clause (2), item (ii) or (iii),
15.2 qualify for leave under this chapter even if the employee or the family member does not
15.3 receive treatment from a health care provider during the absence, and even if the absence
15.4 does not last more than three consecutive, full calendar days.

15.5 Subd. 38. **State's average weekly wage.** "State's average weekly wage" means the
15.6 weekly wage calculated under section 268.035, subdivision 23.

15.7 Subd. 39. **Supplemental benefit payment.** (a) "Supplemental benefit payment" means:

15.8 (1) a payment made by an employer to an employee as salary continuation or as paid
15.9 time off. Such a payment must be in addition to any family or medical leave benefits the
15.10 employee is receiving under this chapter; and

15.11 (2) a payment offered by an employer to an employee who is taking leave under this
15.12 chapter to supplement the family or medical leave benefits the employee is receiving.

15.13 (b) Employers may, but are not required to, designate certain benefits including but not
15.14 limited to salary continuation, vacation leave, sick leave, or other paid time off as a
15.15 supplemental benefit payment.

15.16 (c) Nothing in this chapter requires an employee to receive supplemental benefit
15.17 payments.

15.18 Subd. 40. **Taxable year.** "Taxable year" has the meaning given in section 290.01,
15.19 subdivision 9.

15.20 Subd. 41. **Taxable wages.** "Taxable wages" means those wages paid to an employee in
15.21 covered employment each calendar year up to an amount equal to the maximum wages
15.22 subject to premium in a calendar year, which is equal to the maximum earnings in that year
15.23 subject to the FICA Old-Age, Survivors, and Disability Insurance tax rounded to the nearest
15.24 \$1,000.

15.25 Subd. 42. **Typical workweek hours.** "Typical workweek hours" means:

15.26 (1) for an hourly employee, the average number of hours worked per week by an
15.27 employee within the high quarter during the base year; or

15.28 (2) 40 hours for a salaried employee, regardless of the number of hours the salaried
15.29 employee typically works.

15.30 Subd. 43. **Wage credits.** "Wage credits" means the amount of wages paid within an
15.31 applicant's base period for covered employment, as defined in subdivision 13.

16.1 Subd. 44. **Wage detail report.** "Wage detail report" means the report on each employee
16.2 in covered employment required from an employer on a calendar quarter basis under section
16.3 268B.12.

16.4 Subd. 45. **Wages.** (a) "Wages" means all compensation for employment, including
16.5 commissions; bonuses, awards, and prizes; severance payments; standby pay; vacation and
16.6 holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by
16.7 a customer of an employer and accounted for by the employee to the employer; sickness
16.8 and accident disability payments, except as otherwise provided in this subdivision; and the
16.9 cash value of housing, utilities, meals, exchanges of services, and any other goods and
16.10 services provided to compensate an employee, except:

16.11 (1) the amount of any payment made to, or on behalf of, an employee under a plan
16.12 established by an employer that makes provision for employees generally or for a class or
16.13 classes of employees, including any amount paid by an employer for insurance or annuities,
16.14 or into a plan, to provide for a payment, on account of (i) retirement, (ii) medical and
16.15 hospitalization expenses in connection with sickness or accident disability, or (iii) death;

16.16 (2) the payment by an employer of the tax imposed upon an employee under United
16.17 States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect
16.18 to compensation paid to an employee for domestic employment in a private household of
16.19 the employer or for agricultural employment;

16.20 (3) any payment made to, or on behalf of, an employee or beneficiary (i) from or to a
16.21 trust described in United States Code, title 26, section 401(a) of the federal Internal Revenue
16.22 Code, that is exempt from tax under section 501(a) at the time of the payment unless the
16.23 payment is made to an employee of the trust as compensation for services as an employee
16.24 and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of
16.25 the payment, is a plan described in section 403(a);

16.26 (4) the value of any special discount or markdown allowed to an employee on goods
16.27 purchased from or services supplied by the employer where the purchases are optional and
16.28 do not constitute regular or systematic payment for services;

16.29 (5) customary and reasonable directors' fees paid to individuals who are not otherwise
16.30 employed by the corporation of which they are directors;

16.31 (6) the payment to employees for reimbursement of meal expenses when employees are
16.32 required to perform work after their regular hours;

17.1 (7) the payment into a trust or plan for purposes of providing legal or dental services if
17.2 provided for all employees generally or for a class or classes of employees;

17.3 (8) the value of parking facilities provided or paid for by an employer, in whole or in
17.4 part, if provided for all employees generally or for a class or classes of employees;

17.5 (9) royalties to an owner of a franchise, license, copyright, patent, oil, mineral, or other
17.6 right;

17.7 (10) advances or reimbursements for traveling or other ordinary and necessary expenses
17.8 incurred or reasonably expected to be incurred in the business of the employer. Traveling
17.9 and other reimbursed expenses must be identified either by making separate payments or
17.10 by specifically indicating the separate amounts where both wages and expense allowances
17.11 are combined in a single payment;

17.12 (11) residual payments to radio, television, and similar artists that accrue after the
17.13 production of television commercials, musical jingles, spot announcements, radio
17.14 transcriptions, film soundtracks, and similar activities;

17.15 (12) the income to a former employee resulting from the exercise of a nonqualified stock
17.16 option;

17.17 (13) supplemental unemployment benefit payments under a plan established by an
17.18 employer, if the payment is not wages under the Federal Unemployment Tax Act. The
17.19 payments are wages unless made solely for the supplementing of weekly state or federal
17.20 unemployment benefits. Supplemental unemployment benefit payments may not be assigned,
17.21 nor may any consideration be required from the applicant, other than a release of claims in
17.22 order to be excluded from wages;

17.23 (14) sickness or accident disability payments made by the employer after the expiration
17.24 of six calendar months following the last calendar month that the individual worked for the
17.25 employer;

17.26 (15) disability payments made under the provisions of any workers' compensation law;

17.27 (16) sickness or accident disability payments made by a third-party payer such as an
17.28 insurance company; or

17.29 (17) payments made into a trust fund, or for the purchase of insurance or an annuity, to
17.30 provide for sickness or accident disability payments to employees under a plan or system
17.31 established by the employer that provides for the employer's employees generally or for a
17.32 class or classes of employees.

(b) Nothing in this subdivision excludes from the term "wages" any payment made under any type of salary reduction agreement, including payments made under a cash or deferred arrangement and cafeteria plan, as defined in United States Code, title 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

(c) Wages includes the total payment to the operator and supplier of a vehicle or other equipment where the payment combines compensation for personal services as well as compensation for the cost of operating and hiring the equipment in a single payment. This paragraph does not apply if:

(1) there is a preexisting written agreement providing for allocation of specific amounts; or

(2) at the time of each payment there is a written acknowledgment indicating the separate allocated amounts.

(d) Wages includes payments made for services as a caretaker. Unless there is a contract or other proof to the contrary, compensation is considered as being equally received by a married couple where the employer makes payment to only one spouse, or by all tenants of a household who perform services where two or more individuals share the same dwelling and the employer makes payment to only one individual.

(e) Wages includes payments made for services by a migrant family. Where services are performed by a married couple or a family and an employer makes payment to only one individual, each worker is considered as having received an equal share of the compensation unless there is a contract or other proof to the contrary.

(f) Wages includes advances or draws against future earnings, when paid, unless the payments are designated as a loan or return of capital on the books and records of the employer at the time of payment.

(g) Wages includes payments made by a subchapter "S" corporation, as organized under the Internal Revenue Code, to or on behalf of officers and shareholders that are reasonable compensation for services performed for the corporation.

For a subchapter "S" corporation, wages does not include:

(1) a loan for business purposes to an officer or shareholder evidenced by a promissory note signed by an officer before the payment of the loan proceeds and recorded on the books and records of the corporation as a loan to an officer or shareholder;

19.1 (2) a repayment of a loan or payment of interest on a loan made by an officer to the
19.2 corporation and recorded on the books and records of the corporation as a liability;

19.3 (3) a reimbursement of reasonable corporation expenses incurred by an officer and
19.4 documented by a written expense voucher and recorded on the books and records of the
19.5 corporation as corporate expenses; and

19.6 (4) a reasonable lease or rental payment to an officer who owns property that is leased
19.7 or rented to the corporation.

19.8 Subd. 46. **Wages paid.** (a) "Wages paid" means the amount of wages:

19.9 (1) that have been actually paid; or

19.10 (2) that have been credited to or set apart so that payment and disposition is under the
19.11 control of the employee.

19.12 (b) Wage payments delayed beyond the regularly scheduled pay date are wages paid on
19.13 the missed pay date. Back pay is wages paid on the date of actual payment. Any wages
19.14 earned but not paid with no scheduled date of payment are wages paid on the last day of
19.15 employment.

19.16 (c) Wages paid does not include wages earned but not paid except as provided for in
19.17 this subdivision.

19.18 Subd. 47. **Week.** "Week" means calendar week ending at midnight Saturday.

19.19 Subd. 48. **Weekly benefit amount.** "Weekly benefit amount" means the amount of
19.20 family and medical leave benefits computed under section 268B.04.

19.21 Sec. 6. **[268B.02] FAMILY AND MEDICAL BENEFIT INSURANCE PROGRAM**
19.22 **CREATION.**

19.23 Subdivision 1. **Creation.** A family and medical benefit insurance program is created to
19.24 be administered by the commissioner according to the terms of this chapter.

19.25 Subd. 2. **Creation of division.** A Family and Medical Benefit Insurance Division is
19.26 created within the department under the authority of the commissioner. The commissioner
19.27 shall appoint a director of the division. The division shall administer and operate the benefit
19.28 program under this chapter.

19.29 Subd. 3. **Rulemaking.** The commissioner may adopt rules to implement the provisions
19.30 of this chapter.

Subd. 4. **Account creation; appropriation.** The family and medical benefit insurance account is created in the special revenue fund in the state treasury. Money in this account is appropriated to the commissioner to pay benefits under and to administer this chapter, including outreach required under section 268B.18.

Subd. 5. **Information technology services and equipment.** The department is exempt from the provisions of section 16E.016 for the purposes of this chapter.

Sec. 7. **[268B.03] PAYMENT OF BENEFITS.**

Subdivision 1. **Requirements.** The commissioner must pay benefits from the family and medical benefit insurance account as provided under this chapter to an applicant who has met each of the following requirements:

(1) the applicant has filed an application for benefits and established a benefit account in accordance with section 268B.04;

(2) the applicant has met all of the ongoing eligibility requirements under section 268B.06;

(3) the applicant does not have an outstanding overpayment of family or medical leave benefits, including any penalties or interest;

(4) the applicant has not been held ineligible for benefits under section 268.07, subdivision 2; and

(5) the applicant is not employed exclusively by a private plan employer and has wage credits during the base year attributable to employers covered under the state family and medical leave program.

Subd. 2. **Benefits paid from state funds.** Benefits are paid from state funds and are not considered paid from any special insurance plan, nor as paid by an employer. An application for family or medical leave benefits is not considered a claim against an employer but is considered a request for benefits from the family and medical benefit insurance account. The commissioner has the responsibility for the proper payment of benefits regardless of the level of interest or participation by an applicant or an employer in any determination or appeal. An applicant's entitlement to benefits must be determined based upon that information available without regard to a burden of proof. Any agreement between an applicant and an employer is not binding on the commissioner in determining an applicant's entitlement. There is no presumption of entitlement or nonentitlement to benefits.

21.1 Sec. 8. **[268B.04] BENEFIT ACCOUNT; BENEFITS.**

21.2 Subdivision 1. Application for benefits; determination of benefit account. (a) An
21.3 application for benefits may be filed in person, by mail, or by electronic transmission as the
21.4 commissioner may require. The applicant must meet eligibility requirements at the time the
21.5 application is filed and must provide all requested information in the manner required. If
21.6 the applicant does not meet eligibility at the time of the application or fails to provide all
21.7 requested information, the communication is not an application for family and medical leave
21.8 benefits.

21.9 (b) The commissioner must examine each application for benefits to determine the base
21.10 period and the benefit year, and based upon all the covered employment in the base period
21.11 the commissioner must determine the weekly benefit amount available, if any, and the
21.12 maximum amount of benefits available, if any. The determination, which is a document
21.13 separate and distinct from a document titled a determination of eligibility or determination
21.14 of ineligibility, must be titled determination of benefit account. A determination of benefit
21.15 account must be sent to the applicant and all base period employers, by mail or electronic
21.16 transmission.

21.17 (c) If a base period employer did not provide wage detail information for the applicant
21.18 as required under section 268B.12, the commissioner may accept an applicant certification
21.19 of wage credits, based upon the applicant's records, and issue a determination of benefit
21.20 account.

21.21 (d) The commissioner may, at any time within 24 months from the establishment of a
21.22 benefit account, reconsider any determination of benefit account and make an amended
21.23 determination if the commissioner finds that the wage credits listed in the determination
21.24 were incorrect for any reason. An amended determination of benefit account must be
21.25 promptly sent to the applicant and all base period employers, by mail or electronic
21.26 transmission. This paragraph does not apply to documents titled determinations of eligibility
21.27 or determinations of ineligibility issued.

21.28 (e) If an amended determination of benefit account reduces the weekly benefit amount
21.29 or maximum amount of benefits available, any benefits that have been paid greater than the
21.30 applicant was entitled is an overpayment of benefits. A determination or amended
21.31 determination issued under this section that results in an overpayment of benefits must set
21.32 out the amount of the overpayment and the requirement that the overpaid benefits must be
21.33 repaid according to section 268B.185.

22.1 Subd. 2. **Benefit account requirements.** (a) Unless paragraph (b) applies, to establish
22.2 a benefit account, an applicant must have wage credits of at least 5.3 percent of the state's
22.3 average annual wage rounded down to the next lower \$100.

22.4 (b) To establish a new benefit account following the expiration of the benefit year on a
22.5 prior benefit account, an applicant must have performed actual work in subsequent covered
22.6 employment and have been paid wages in one or more completed calendar quarters that
22.7 started after the effective date of the prior benefit account. The wages paid for that
22.8 employment must be at least enough to meet the requirements of paragraph (a). A benefit
22.9 account under this paragraph must not be established effective earlier than the Sunday
22.10 following the end of the most recent completed calendar quarter in which the requirements
22.11 of paragraph (a) were met. An applicant must not establish a second benefit account as a
22.12 result of one loss of employment.

22.13 Subd. 3. **Weekly benefit amount; maximum amount of benefits available; prorated**
22.14 **amount.** (a) Subject to the maximum weekly benefit amount, an applicant's weekly benefit
22.15 is calculated by adding the amounts obtained by applying the following percentage to an
22.16 applicant's average typical workweek and weekly wage during the high quarter of the base
22.17 period:

22.18 (1) 90 percent of wages that do not exceed 50 percent of the state's average weekly wage;
22.19 plus

22.20 (2) 66 percent of wages that exceed 50 percent of the state's average weekly wage but
22.21 not 100 percent; plus

22.22 (3) 55 percent of wages that exceed 100 percent of the state's average weekly wage.

22.23 (b) The state's average weekly wage is the average wage as calculated under section
22.24 268.035, subdivision 23, at the time a benefit amount is first determined.

22.25 (c) The maximum weekly benefit amount is the state's average weekly wage as calculated
22.26 under section 268.035, subdivision 23.

22.27 (d) The state's maximum weekly benefit amount, computed in accordance with section
22.28 268.035, subdivision 23, applies to a benefit account established effective on or after the
22.29 last Sunday in October. Once established, an applicant's weekly benefit amount is not
22.30 affected by the last Sunday in October change in the state's maximum weekly benefit amount.

22.31 (e) For an employee receiving family or medical leave, a weekly benefit amount is
22.32 prorated when:

22.33 (1) the employee works hours for wages; or

23.1 (2) the employee uses paid sick leave, paid vacation leave, or other paid time off that is
23.2 not considered a supplemental benefit payment as defined in section 268B.01, subdivision
23.3 37.

23.4 Subd. 4. **Timing of payment.** Except as otherwise provided for in this chapter, benefits
23.5 must be paid weekly.

23.6 Subd. 5. **Maximum length of benefits.** (a) Except as provided in paragraph (b), in a
23.7 single benefit year, an applicant may receive up to 12 weeks of benefits under this chapter
23.8 related to the applicant's serious health condition or pregnancy and up to 12 weeks of benefits
23.9 under this chapter for bonding, safety leave, or family care.

23.10 (b) An applicant may receive up to 12 weeks of benefits in a single benefit year for leave
23.11 related to one or more qualifying exigencies.

23.12 Subd. 6. **Minimum period for which benefits payable.** Except for a claim for benefits
23.13 for bonding leave, any claim for benefits must be based on a single qualifying event of at
23.14 least seven calendar days. Benefits may be paid for a minimum duration of eight consecutive
23.15 hours in a week. If an employee on leave claims eight hours at any point during a week, the
23.16 minimum duration is satisfied.

23.17 Subd. 7. **Right of appeal.** (a) A determination or amended determination of benefit
23.18 account is final unless an applicant files an appeal within 20 calendar days after the sending
23.19 of the determination or amended determination. Every determination or amended
23.20 determination of benefit account must contain a prominent statement indicating in clear
23.21 language the consequences of not appealing. Proceedings on the appeal are conducted in
23.22 accordance with section 268B.08.

23.23 (b) Any applicant may appeal from a determination or amended determination of benefit
23.24 account on the issue of whether services performed constitute employment, whether the
23.25 employment is covered employment, and whether money paid constitutes wages.

23.26 Subd. 8. **Limitations on applications and benefit accounts.** (a) An application for
23.27 family or medical leave benefits is effective the Sunday of the calendar week that the
23.28 application was filed. An application for benefits may be backdated one calendar week
23.29 before the Sunday of the week the application was actually filed if the applicant requests
23.30 the backdating within seven calendar days of the date the application is filed. An application
23.31 may be backdated only if the applicant was eligible for the benefit during the period of the
23.32 backdating. If an individual attempted to file an application for benefits, but was prevented
23.33 from filing an application by the department, the application is effective the Sunday of the
23.34 calendar week the individual first attempted to file an application.

24.1 (b) A benefit account established under subdivision 2 is effective the date the application
24.2 for benefits was effective.

24.3 (c) A benefit account, once established, may later be withdrawn if:

24.4 (1) the applicant has not been paid any benefits on that benefit account; and

24.5 (2) a new application for benefits is filed and a new benefit account is established at the
24.6 time of the withdrawal.

24.7 A benefit account may be withdrawn after the expiration of the benefit year, and the
24.8 new work requirements of subdivision 2, paragraph (b), do not apply if the applicant was
24.9 not paid any benefits on the benefit account that is being withdrawn.

24.10 A determination or amended determination of eligibility or ineligibility issued under
24.11 section 268B.07 that was sent before the withdrawal of the benefit account, remains in effect
24.12 and is not voided by the withdrawal of the benefit account.

24.13 **Sec. 9. [268B.05] CONTINUED REQUEST FOR BENEFITS.**

24.14 A continued request for family or medical leave benefits is a certification by an applicant,
24.15 done on a weekly basis, that the applicant is unable to perform usual work due to a qualifying
24.16 event and meets the ongoing eligibility requirements for benefits under section 268B.06. A
24.17 continued request must include information on possible issues of ineligibility.

24.18 **Sec. 10. [268B.06] ELIGIBILITY REQUIREMENTS; PAYMENTS THAT AFFECT**
24.19 **BENEFITS.**

24.20 Subdivision 1. **Eligibility conditions.** (a) An applicant may be eligible to receive family
24.21 or medical leave benefits for any week if:

24.22 (1) the applicant has filed a continued request for benefits for that week under section
24.23 268B.05;

24.24 (2) the week for which benefits are requested is in the applicant's benefit year;

24.25 (3) the applicant was unable to perform regular work due to a serious health condition,
24.26 a qualifying exigency, safety leave, family care, bonding, pregnancy, or recovery from
24.27 pregnancy for the period required under subdivision 2; and

24.28 (4) the applicant has sufficient wage credits from an employer or employers as defined
24.29 in section 268B.01, subdivision 41, to establish a benefit account under section 268B.04.

(b) A self-employed individual or independent contractor who has elected and been approved for coverage under section 268B.11 need not fulfill the requirement of paragraph (a), clause (4).

Subd. 2. **Seven-day qualifying event.** (a) The period for which an applicant is seeking benefits must be or have been based on a single event of at least seven calendar days' duration related to pregnancy, recovery from pregnancy, family care, a qualifying exigency, safety leave, or the applicant's serious health condition. The days need not be consecutive.

(b) Benefits related to bonding need not meet the seven-day qualifying event requirement.

(c) The commissioner must use the rulemaking authority under section 268B.02, subdivision 3, to adopt rules regarding what serious health conditions and other events are prospectively presumed to constitute seven-day qualifying events under this chapter.

Subd. 3. **Not eligible.** An applicant is ineligible for family or medical leave benefits for any portion of a typical workweek:

(1) that occurs before the effective date of a benefit account;

(2) that the applicant has an outstanding misrepresentation overpayment balance under section 268B.185, subdivision 5, including any penalties and interest;

(3) that the applicant fails or refuses to provide information on an issue of ineligibility required under section 268B.07, subdivision 2; or

(4) for which the applicant worked for pay.

Subd. 4. **Vacation, sick leave, and supplemental benefit payments.** (a) An applicant is not eligible to receive benefits for any portion of a typical workweek the applicant is receiving, has received, or will receive vacation pay, sick pay, or personal time off pay, also known as "PTO."

(b) Paragraph (a) does not apply:

(1) upon a permanent separation from employment;

(2) to payments from a vacation fund administered by a union or a third party not under the control of the employer; or

(3) to supplemental benefit payments, as defined in section 268B.01, subdivision 37.

(c) Payments under this subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a payment. The date the payment is actually made

26.1 or received, or that an applicant must agree to a release of claims, does not affect the
26.2 application of this subdivision.

26.3 Subd. 5. **Workers' compensation and disability insurance offset.** (a) An applicant is
26.4 not eligible to receive benefits for any portion of a week in which the applicant is receiving
26.5 or has received compensation for loss of wages equal to or in excess of the applicant's
26.6 weekly family or medical leave benefit amount under:

26.7 (1) the workers' compensation law of this state;

26.8 (2) the workers' compensation law of any other state or similar federal law; or

26.9 (3) any insurance or trust fund paid in whole or in part by an employer.

26.10 (b) This subdivision does not apply to an applicant who has a claim pending for loss of
26.11 wages under paragraph (a). If the applicant later receives compensation as a result of the
26.12 pending claim, the applicant is subject to paragraph (a) and the family or medical leave
26.13 benefits paid are overpaid benefits under section 268B.185.

26.14 (c) If the amount of compensation described under paragraph (a) for any week is less
26.15 than the applicant's weekly family or medical leave benefit amount, benefits requested for
26.16 that week are reduced by the amount of that compensation payment.

26.17 Subd. 6. **Separation, severance, or bonus payments.** (a) An applicant is not eligible
26.18 to receive benefits for any week the applicant is receiving, has received, or will receive
26.19 separation pay, severance pay, bonus pay, or any other payments paid by an employer
26.20 because of, upon, or after separation from employment. This subdivision applies if the
26.21 payment is:

26.22 (1) considered wages under section 268B.01, subdivision 43; or

26.23 (2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social
26.24 Security and Medicare.

26.25 (b) Payments under this subdivision are applied to the period immediately following the
26.26 later of the date of separation from employment or the date the applicant first becomes
26.27 aware that the employer will be making a payment. The date the payment is actually made
26.28 or received, or that an applicant must agree to a release of claims, does not affect the
26.29 application of this paragraph.

26.30 (c) This subdivision does not apply to vacation pay, sick pay, personal time off pay, or
26.31 supplemental benefit payment under subdivision 4.

26.32 (d) This subdivision applies to all the weeks of payment.

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly benefit amount, benefits are reduced by the amount of the payment.

Subd. 7. **Social Security disability benefits.** (a) An applicant who is receiving, has received, or has filed for primary Social Security disability benefits for any week is ineligible for benefits for that week, unless:

(1) the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period; or

(2) the applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is available for suitable employment.

(b) If an applicant meets the requirements of paragraph (a), clause (1), there is no deduction from the applicant's weekly benefit amount for any Social Security disability benefits.

(c) If an applicant meets the requirements of paragraph (a), clause (2), there must be deducted from the applicant's weekly benefit amount 50 percent of the weekly equivalent of the primary Social Security disability benefits the applicant is receiving, has received, or has filed for, with respect to that week.

If the Social Security Administration determines that the applicant is not entitled to receive primary Social Security disability benefits for any week the applicant has applied for those benefits, this paragraph does not apply to that week.

(d) Information from the Social Security Administration is conclusive, absent specific evidence showing that the information was erroneous.

Sec. 11. [268B.07] DETERMINATION ON ISSUES OF ELIGIBILITY.

Subdivision 1. **Employer notification.** (a) Upon a determination that an applicant is entitled to benefits, the commissioner must promptly send a notification to each current employer of the applicant, if any, in accordance with paragraph (b).

(b) The notification under paragraph (a) must include, at a minimum:

(1) the name of the applicant;

(2) that the applicant has applied for and received benefits;

28.1 (3) the week the benefits commence;

28.2 (4) the weekly benefit amount payable; and

28.3 (5) the maximum duration of benefits.

28.4 Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility
28.5 raised by information required from an applicant and send to the applicant and any current
28.6 base period employer, by mail or electronic transmission, a document titled a determination
28.7 of eligibility or a determination of ineligibility, as is appropriate, within two weeks.

28.8 (b) If an applicant obtained benefits through misrepresentation, the department is
28.9 authorized to issue a determination of ineligibility within 48 months of the establishment
28.10 of the benefit account.

28.11 (c) If the department has filed an intervention in a worker's compensation matter under
28.12 section 176.361, the department is authorized to issue a determination of ineligibility within
28.13 48 months of the establishment of the benefit account.

28.14 (d) A determination of eligibility or determination of ineligibility is final unless an appeal
28.15 is filed by the applicant within 20 calendar days after sending. The determination must
28.16 contain a prominent statement indicating the consequences of not appealing. Proceedings
28.17 on the appeal are conducted in accordance with section 268B.08.

28.18 (e) An issue of ineligibility required to be determined under this section includes any
28.19 question regarding the denial or allowing of benefits under this chapter.

28.20 Subd. 3. **Amended determination.** Unless an appeal has been filed, the commissioner,
28.21 on the commissioner's own motion, may reconsider a determination of eligibility or
28.22 determination of ineligibility that has not become final and issue an amended determination.
28.23 Any amended determination must be sent to the applicant and any employer in the current
28.24 base period by mail or electronic transmission. Any amended determination is final unless
28.25 an appeal is filed by the applicant within 20 calendar days after sending. Proceedings on
28.26 the appeal are conducted in accordance with section 268B.08.

28.27 Subd. 4. **Benefit payment.** If a determination or amended determination allows benefits
28.28 to an applicant, the family or medical leave benefits must be paid regardless of any appeal
28.29 period or any appeal having been filed.

28.30 Subd. 5. **Overpayment.** A determination or amended determination that holds an
28.31 applicant ineligible for benefits for periods an applicant has been paid benefits is an
28.32 overpayment of those family or medical leave benefits. A determination or amended
28.33 determination issued under this section that results in an overpayment of benefits must set

29.1 out the amount of the overpayment and the requirement that the overpaid benefits must be
29.2 repaid according to section 268B.185.

29.3 Sec. 12. **[268B.08] APPEAL PROCESS.**

29.4 Subdivision 1. **Hearing.** (a) The commissioner shall designate a chief benefit judge.

29.5 (b) Upon a timely appeal to a determination having been filed or upon a referral for
29.6 direct hearing, the chief benefit judge must set a time and date for a de novo due-process
29.7 hearing and send notice to an applicant and an employer, by mail or electronic transmission,
29.8 not less than ten calendar days before the date of the hearing.

29.9 (c) The commissioner may adopt rules on procedures for hearings. The rules need not
29.10 conform to common law or statutory rules of evidence and other technical rules of procedure.

29.11 (d) The chief benefit judge has discretion regarding the method by which the hearing is
29.12 conducted.

29.13 Subd. 2. **Decision.** (a) After the conclusion of the hearing, upon the evidence obtained,
29.14 the benefit judge must serve by mail or electronic transmission to all parties the decision,
29.15 reasons for the decision, and written findings of fact.

29.16 (b) Decisions of a benefit judge are not precedential.

29.17 Subd. 3. **Request for reconsideration.** Any party, or the commissioner, may, within
29.18 30 calendar days after service of the benefit judge's decision, file a request for reconsideration
29.19 asking the judge to reconsider that decision.

29.20 Subd. 4. **Appeal to court of appeals.** Any final determination on a request for
29.21 reconsideration may be appealed by any party directly to the Minnesota Court of Appeals.

29.22 Subd. 5. **Benefit judges.** (a) Only employees of the department who are attorneys licensed
29.23 to practice law in Minnesota may serve as a chief benefit judge, senior benefit judges who
29.24 are supervisors, or benefit judges.

29.25 (b) The chief benefit judge must assign a benefit judge to conduct a hearing and may
29.26 transfer to another benefit judge any proceedings pending before another benefit judge.

29.27 Sec. 13. **[268B.085] LEAVE.**

29.28 Subdivision 1. **Right to leave.** Ninety calendar days from the date of hire, an employee
29.29 has a right to leave from employment for any day, or portion of a day, for which the employee
29.30 would be eligible for benefits under this chapter, regardless of whether the employee actually

30.1 applied for benefits and regardless of whether the employee is covered under a private plan
30.2 or the public program under this chapter.

30.3 Subd. 2. **Notice to employer.** (a) If the need for leave is foreseeable, an employee must
30.4 provide the employer at least 30 days' advance notice before leave under this chapter is to
30.5 begin. If 30 days' notice is not practicable because of a lack of knowledge of approximately
30.6 when leave will be required to begin, a change in circumstances, or a medical emergency,
30.7 notice must be given as soon as practicable. Whether leave is to be continuous or is to be
30.8 taken intermittently or on a reduced-schedule basis, notice need only be given one time, but
30.9 the employee must advise the employer as soon as practicable if dates of scheduled leave
30.10 change or are extended, or were initially unknown. In those cases where the employee is
30.11 required to provide at least 30 days' notice of foreseeable leave and does not do so, the
30.12 employee must explain the reasons why notice was not practicable upon request from the
30.13 employer.

30.14 (b) "As soon as practicable" means as soon as both possible and practical, taking into
30.15 account all of the facts and circumstances in the individual case. When an employee becomes
30.16 aware of a need for leave under this chapter less than 30 days in advance, it should be
30.17 practicable for the employee to provide notice of the need for leave either the same day or
30.18 the next day, unless the need for leave is based on a medical emergency. In all cases,
30.19 however, the determination of when an employee could practicably provide notice must
30.20 take into account the individual facts and circumstances.

30.21 (c) An employee shall provide at least verbal notice sufficient to make the employer
30.22 aware that the employee needs leave allowed under this chapter and the anticipated timing
30.23 and duration of the leave. An employer may require an employee giving notice of leave to
30.24 include a certification for the leave as described in subdivision 5. Such certification, if
30.25 required by an employer, is timely when the employee delivers it as soon as practicable
30.26 given the circumstances requiring the need for leave, and the required contents of the
30.27 certification.

30.28 (d) An employer may require an employee to comply with the employer's usual and
30.29 customary notice and procedural requirements for requesting leave, absent unusual
30.30 circumstances or other circumstances caused by the reason for the employee's need for
30.31 leave. Leave under this chapter must not be delayed or denied where an employer's usual
30.32 and customary notice or procedural requirements require notice to be given sooner than set
30.33 forth in this subdivision.

31.1 (e) If an employer has failed to provide notice to the employee as required under section
31.2 268B.26, paragraph (a), (b), or (e), the employee is not required to comply with the notice
31.3 requirements of this subdivision.

31.4 Subd. 3. **Bonding leave.** Bonding leave taken under this chapter begins at a time requested
31.5 by the employee. Bonding leave must begin within 12 months of the birth, adoption, or
31.6 placement of a foster child, except that, in the case where the child must remain in the
31.7 hospital longer than the mother, the leave must begin within 12 months after the child leaves
31.8 the hospital.

31.9 Subd. 4. **Intermittent or reduced-leave schedule.** (a) Leave under this chapter, based
31.10 on a serious health condition, may be taken intermittently or on a reduced-leave schedule
31.11 if such leave would be medically beneficial to the individual with the serious health condition.
31.12 For all other leaves under this chapter, leave may be taken intermittently or on a
31.13 reduced-leave schedule. Intermittent leave is leave taken in separate blocks of time due to
31.14 a single, seven-day qualifying event. A reduced-leave schedule is a leave schedule that
31.15 reduces an employee's usual number of working hours per workweek or hours per workday.

31.16 (b) Leave taken intermittently or on a reduced-schedule basis counts toward the
31.17 maximums described in section 268B.04, subdivision 5.

31.18 Subd. 5. **Certification.** (a) Certification for an applicant taking leave related to the
31.19 applicant's serious health condition shall be sufficient if the certification states the date on
31.20 which the serious health condition began, the probable duration of the condition, and the
31.21 appropriate medical facts within the knowledge of the health care provider as required by
31.22 the commissioner.

31.23 (b) Certification for an applicant taking leave to care for a family member with a serious
31.24 health condition shall be sufficient if the certification states the date on which the serious
31.25 health condition commenced, the probable duration of the condition, the appropriate medical
31.26 facts within the knowledge of the health care provider as required by the commissioner, a
31.27 statement that the family member requires care, and an estimate of the amount of time that
31.28 the family member will require care.

31.29 (c) Certification for an applicant taking leave related to pregnancy shall be sufficient if
31.30 the certification states the expected due date and recovery period based on appropriate
31.31 medical facts within the knowledge of the health care provider.

31.32 (d) Certification for an applicant taking bonding leave because of the birth of the
31.33 applicant's child shall be sufficient if the certification includes either the child's birth

32.1 certificate or a document issued by the health care provider of the child or the health care
32.2 provider of the person who gave birth, stating the child's birth date.

32.3 (e) Certification for an applicant taking bonding leave because of the placement of a
32.4 child with the applicant for adoption or foster care shall be sufficient if the applicant provides
32.5 a document issued by the health care provider of the child, an adoption or foster care agency
32.6 involved in the placement, or by other individuals as determined by the commissioner that
32.7 confirms the placement and the date of placement. To the extent that the status of an applicant
32.8 as an adoptive or foster parent changes while an application for benefits is pending, or while
32.9 the covered individual is receiving benefits, the applicant must notify the department of
32.10 such change in status in writing.

32.11 (f) Certification for an applicant taking leave because of a qualifying exigency shall be
32.12 sufficient if the certification includes:

32.13 (1) a copy of the family member's active-duty orders;

32.14 (2) other documentation issued by the United States armed forces; or

32.15 (3) other documentation permitted by the commissioner.

32.16 (g) Certification for an applicant taking safety leave is sufficient if the certification
32.17 includes a court record or documentation signed by a volunteer or employee of a victim's
32.18 services organization, an attorney, a police officer, or an antiviolence counselor. The
32.19 commissioner must not require disclosure of details relating to an applicant's or applicant's
32.20 family member's domestic abuse, sexual assault, or stalking.

32.21 (h) Certifications under paragraphs (a) to (e) must be reviewed and signed by a health
32.22 care provider with knowledge of the qualifying event associated with the leave.

32.23 (i) For a leave taken on an intermittent or reduced-schedule basis, based on a serious
32.24 health condition of an applicant or applicant's family member, the certification under this
32.25 subdivision must include an explanation of how such leave would be medically beneficial
32.26 to the individual with the serious health condition.

32.27 **Sec. 14. [268B.09] EMPLOYMENT PROTECTIONS.**

32.28 Subdivision 1. **Retaliation prohibited.** An employer must not retaliate against an
32.29 employee for requesting or obtaining benefits, or for exercising any other right under this
32.30 chapter.

32.31 Subd. 2. **Interference prohibited.** An employer must not obstruct or impede an
32.32 application for leave or benefits or the exercise of any other right under this chapter.

33.1 Subd. 3. **Waiver of rights void.** Any agreement to waive, release, or commute rights
33.2 to benefits or any other right under this chapter is void.

33.3 Subd. 4. **No assignment of benefits.** Any assignment, pledge, or encumbrance of benefits
33.4 is void. Benefits are exempt from levy, execution, attachment, or any other remedy provided
33.5 for the collection of debt. Any waiver of this subdivision is void.

33.6 Subd. 5. **Continued insurance.** During any leave for which an employee is entitled to
33.7 benefits under this chapter, the employer must maintain coverage under any group insurance
33.8 policy, group subscriber contract, or health care plan for the employee and any dependents
33.9 as if the employee was not on leave, provided, however, that the employee must continue
33.10 to pay any employee share of the cost of such benefits.

33.11 Subd. 6. **Employee right to reinstatement.** (a) On return from leave under this chapter,
33.12 an employee is entitled to be returned to the same position the employee held when leave
33.13 commenced or to an equivalent position with equivalent benefits, pay, and other terms and
33.14 conditions of employment. An employee is entitled to reinstatement even if the employee
33.15 has been replaced or the employee's position has been restructured to accommodate the
33.16 employee's absence.

33.17 (b)(1) An equivalent position is one that is virtually identical to the employee's former
33.18 position in terms of pay, benefits, and working conditions, including privileges, prerequisites,
33.19 and status. It must involve the same or substantially similar duties and responsibilities,
33.20 which must entail substantially equivalent skill, effort, responsibility, and authority.

33.21 (2) If an employee is no longer qualified for the position because of the employee's
33.22 inability to attend a necessary course, renew a license, fly a minimum number of hours, or
33.23 similar condition, as a result of the leave, the employee must be given a reasonable
33.24 opportunity to fulfill those conditions upon return from leave.

33.25 (c)(1) An employee is entitled to any unconditional pay increases which may have
33.26 occurred during the leave period, such as cost of living increases. Pay increases conditioned
33.27 upon seniority, length of service, or work performed must be granted in accordance with
33.28 the employer's policy or practice with respect to other employees on an equivalent leave
33.29 status for a reason that does not qualify for leave under this chapter. An employee is entitled
33.30 to be restored to a position with the same or equivalent pay premiums, such as a shift
33.31 differential. If an employee departed from a position averaging ten hours of overtime, and
33.32 corresponding overtime pay, each week an employee is ordinarily entitled to such a position
33.33 on return from leave under this chapter.

(2) Equivalent pay includes any bonus or payment, whether it is discretionary or nondiscretionary, made to employees consistent with clause (1). If a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to leave under this chapter, the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify for leave under this chapter.

(d) Benefits under this section include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in section 3(3) of United States Code, title 29, section 1002(3).

(1) At the end of an employee's leave under this chapter, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from a leave under this chapter, an employee must not be required to requalify for any benefits the employee enjoyed before leave began, including family or dependent coverages.

(2) An employee may, but is not entitled to, accrue any additional benefits or seniority during a leave under this chapter. Benefits accrued at the time leave began must be available to an employee upon return from leave.

(3) With respect to pension and other retirement plans, leave under this chapter must not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. If the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions, or participation purposes, an employee on leave under this chapter must be treated as employed on that date. Periods of leave under this chapter need not be treated as credited service for purposes of benefit accrual, vesting, and eligibility to participate.

(4) Employees on leave under this chapter must be treated as if they continued to work for purposes of changes to benefit plans. Employees on leave under this chapter are entitled to changes in benefit plans, except those which may be dependent upon seniority or accrual during the leave period, immediately upon return from leave or to the same extent they would have qualified if no leave had been taken.

(e) An equivalent position must have substantially similar duties, conditions, responsibilities, privileges, and status as the employee's original position.

(1) The employee must be reinstated to the same or a geographically proximate worksite from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed.

(2) The employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.

(3) The employee must have the same or an equivalent opportunity for bonuses, profit-sharing, and other similar discretionary and nondiscretionary payments.

(4) This chapter does not prohibit an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, an employee must not be induced by the employer to accept a different position against the employee's wishes.

(f) The requirement that an employee be restored to the same or equivalent job with the same or equivalent pay, benefits, and terms and conditions of employment does not extend to de minimis, intangible, or unmeasurable aspects of the job.

Subd. 7. **Limitations on an employee's right to reinstatement.** An employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the period of leave under this chapter. An employer must be able to show that an employee would not otherwise have been employed at the time reinstatement is requested in order to deny restoration to employment.

(1) If an employee is laid off during the course of taking a leave under this chapter and employment is terminated, the employer's responsibility to continue the leave, maintain group health plan benefits, and restore the employee cease at the time the employee is laid off, provided the employer has no continuing obligations under a collective bargaining agreement or otherwise. An employer would have the burden of proving that an employee would have been laid off during the period of leave under this chapter and, therefore, would not be entitled to restoration. Restoration to a job slated for layoff when the employee's original position would not meet the requirements of an equivalent position.

(2) If a shift has been eliminated or overtime has been decreased, an employee would not be entitled to return to work that shift or the original overtime hours upon restoration. However, if a position on, for example, a night shift has been filled by another employee, the employee is entitled to return to the same shift on which employed before taking leave under this chapter.

(3) If an employee was hired for a specific term or only to perform work on a discrete project, the employer has no obligation to restore the employee if the employment term or project is over and the employer would not otherwise have continued to employ the employee.

Subd. 8. Remedies. (a) In addition to any other remedies available to an employee in law or equity, an employer who violates the provisions of this section is liable to any employee affected for:

(1) damages equal to the amount of:

(i) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation, or, in cases in which wages, salary, employment benefits, or other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation; and

(ii) reasonable interest on the amount described in item (i); and

(2) such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

(b) An action to recover damages or equitable relief prescribed in paragraph (a) may be maintained against any employer in any federal or state court of competent jurisdiction by any one or more employees for and on behalf of:

(1) the employees; or

(2) the employees and other employees similarly situated.

(c) The court in an action under this section must, in addition to any judgment awarded to the plaintiff or plaintiffs, allow reasonable attorney fees, reasonable expert witness fees, and other costs of the action to be paid by the defendant.

(d) Nothing in this section shall be construed to allow an employee to recover damages from an employer for the denial of benefits under this chapter by the department, unless the employer unlawfully interfered with the application for benefits under subdivision 2.

Sec. 15. [268B.10] SUBSTITUTION OF A PRIVATE PLAN.

Subdivision 1. Application for substitution. Employers may apply to the commissioner for approval to meet their obligations under this chapter through the substitution of a private plan that provides paid family, paid medical, or paid family and medical benefits. In order to be approved as meeting an employer's obligations under this chapter, a private plan must confer all of the same rights, protections, and benefits provided to employees under this chapter, including but not limited to benefits under section 268B.04 and employment

37.1 protections under section 268B.09. An employee covered by a private plan under this section
37.2 retains all applicable rights and remedies under section 268B.09.

37.3 Subd. 2. **Private plan requirements; medical benefit program.** (a) The commissioner
37.4 must approve an application for private provision of the medical benefit program if the
37.5 commissioner determines:

37.6 (1) all of the employees of the employer are to be covered under the provisions of the
37.7 employer plan;

37.8 (2) eligibility requirements for benefits and leave are no more restrictive than as provided
37.9 under this chapter;

37.10 (3) the weekly benefits payable under the private plan for any week are at least equal to
37.11 the weekly benefit amount payable under this chapter, taking into consideration any coverage
37.12 with respect to concurrent employment by another employer;

37.13 (4) the total number of weeks for which benefits are payable under the private plan is
37.14 at least equal to the total number of weeks for which benefits would have been payable
37.15 under this chapter;

37.16 (5) no greater amount is required to be paid by employees toward the cost of benefits
37.17 under the employer plan than by this chapter;

37.18 (6) wage replacement benefits are stated in the plan separately and distinctly from other
37.19 benefits;

37.20 (7) the private plan will provide benefits and leave for any serious health condition or
37.21 pregnancy for which benefits are payable, and leave provided, under this chapter;

37.22 (8) the private plan will impose no additional condition or restriction on the use of
37.23 medical benefits beyond those explicitly authorized by this chapter or regulations
37.24 promulgated pursuant to this chapter;

37.25 (9) the private plan will allow any employee covered under the private plan who is
37.26 eligible to receive medical benefits under this chapter to receive medical benefits under the
37.27 employer plan; and

37.28 (10) coverage will continue under the private plan while an employee remains employed
37.29 by the employer.

37.30 (b) Notwithstanding paragraph (a), a private plan may provide shorter durations of leave
37.31 and benefit eligibility if the total dollar value of wage replacement benefits under the private

38.1 plan for an employee for any particular qualifying event meets or exceeds what the total
38.2 dollar value would be under the public family and medical benefit program.

38.3 Subd. 3. **Private plan requirements; family benefit program.** (a) The commissioner
38.4 must approve an application for private provision of the family benefit program if the
38.5 commissioner determines:

38.6 (1) all of the employees of the employer are to be covered under the provisions of the
38.7 employer plan;

38.8 (2) eligibility requirements for benefits and leave are no more restrictive than as provided
38.9 under this chapter;

38.10 (3) the weekly benefits payable under the private plan for any week are at least equal to
38.11 the weekly benefit amount payable under this chapter, taking into consideration any coverage
38.12 with respect to concurrent employment by another employer;

38.13 (4) the total number of weeks for which benefits are payable under the private plan is
38.14 at least equal to the total number of weeks for which benefits would have been payable
38.15 under this chapter;

38.16 (5) no greater amount is required to be paid by employees toward the cost of benefits
38.17 under the employer plan than by this chapter;

38.18 (6) wage replacement benefits are stated in the plan separately and distinctly from other
38.19 benefits;

38.20 (7) the private plan will provide benefits and leave for any care for a family member
38.21 with a serious health condition, bonding with a child, qualifying exigency, or safety leave
38.22 event for which benefits are payable, and leave provided, under this chapter;

38.23 (8) the private plan will impose no additional condition or restriction on the use of family
38.24 benefits beyond those explicitly authorized by this chapter or regulations promulgated
38.25 pursuant to this chapter;

38.26 (9) the private plan will allow any employee covered under the private plan who is
38.27 eligible to receive medical benefits under this chapter to receive medical benefits under the
38.28 employer plan; and

38.29 (10) coverage will continue under the private plan while an employee remains employed
38.30 by the employer.

38.31 (b) Notwithstanding paragraph (a), a private plan may provide shorter durations of leave
38.32 and benefit eligibility if the total dollar value of wage replacement benefits under the private

39.1 plan for an employee for any particular qualifying event meets or exceeds what the total
39.2 dollar value would be under the public family and medical benefit program.

39.3 Subd. 4. **Use of private insurance products.** Nothing in this section prohibits an
39.4 employer from meeting the requirements of a private plan through a private insurance
39.5 product. If the employer plan involves a private insurance product, that insurance product
39.6 must conform to any applicable law or rule.

39.7 Subd. 5. **Private plan approval and oversight fee.** An employer with an approved
39.8 private plan is not required to pay premiums established under section 268B.14. An employer
39.9 with an approved private plan is responsible for a private plan approval and oversight fee
39.10 equal to \$250 for employers with fewer than 50 employees, \$500 for employers with 50 to
39.11 499 employees, and \$1,000 for employers with 500 or more employees. The employer must
39.12 pay this fee (1) upon initial application for private plan approval, and (2) any time the
39.13 employer applies to amend the private plan. The commissioner must review and report on
39.14 the adequacy of this fee to cover private plan administrative costs annually beginning October
39.15 1, 2022, as part of the annual report established in section 268B.21.

39.16 Subd. 6. **Plan duration.** A private plan under this section must be in effect for a period
39.17 of at least one year and, thereafter, continuously unless the commissioner finds that the
39.18 employer has given notice of withdrawal from the plan in a manner specified by the
39.19 commissioner in this section or rule. The plan may be withdrawn by the employer within
39.20 30 days of the effective date of any law increasing the benefit amounts or within 30 days
39.21 of the date of any change in the rate of premiums. If the plan is not withdrawn, it must be
39.22 amended to conform to provide the increased benefit amount or change in the rate of the
39.23 employee's premium on the date of the increase or change.

39.24 Subd. 7. **Appeals.** An employer may appeal any adverse action regarding that employer's
39.25 private plan to the commissioner, in a manner specified by the commissioner.

39.26 Subd. 8. **Employees no longer covered.** (a) An employee is no longer covered by an
39.27 approved private plan if a leave under this chapter occurs after the employment relationship
39.28 with the private plan employer ends, or if the commissioner revokes the approval of the
39.29 private plan.

39.30 (b) An employee no longer covered by an approved private plan is, if otherwise eligible,
39.31 immediately entitled to benefits under this chapter to the same extent as though there had
39.32 been no approval of the private plan.

40.1 Subd. 9. **Posting of notice regarding private plan.** An employer with a private plan
40.2 must provide a notice prepared by or approved by the commissioner regarding the private
40.3 plan consistent with section 268B.26.

40.4 Subd. 10. **Amendment.** (a) The commissioner must approve any amendment to a private
40.5 plan adjusting the provisions thereof, if the commissioner determines:

40.6 (1) that the plan, as amended, will conform to the standards set forth in this chapter; and

40.7 (2) that notice of the amendment has been delivered to all affected employees at least
40.8 ten days before the submission of the amendment.

40.9 (b) Any amendments approved under this subdivision are effective on the date of the
40.10 commissioner's approval, unless the commissioner and the employer agree on a later date.

40.11 Subd. 11. **Successor employer.** A private plan in effect at the time a successor acquires
40.12 the employer organization, trade, or business, or substantially all the assets thereof, or a
40.13 distinct and severable portion of the organization, trade, or business, and continues its
40.14 operation without substantial reduction of personnel resulting from the acquisition, must
40.15 continue the approved private plan and must not withdraw the plan without a specific request
40.16 for withdrawal in a manner and at a time specified by the commissioner. A successor may
40.17 terminate a private plan with notice to the commissioner and within 90 days from the date
40.18 of the acquisition.

40.19 Subd. 12. **Revocation of approval by commissioner.** (a) The commissioner may
40.20 terminate any private plan if the commissioner determines the employer:

40.21 (1) failed to pay benefits;

40.22 (2) failed to pay benefits in a timely manner, consistent with the requirements of this
40.23 chapter;

40.24 (3) failed to submit reports as required by this chapter or rule adopted under this chapter;
40.25 or

40.26 (4) otherwise failed to comply with this chapter or rule adopted under this chapter.

40.27 (b) The commissioner must give notice of the intention to terminate a plan to the employer
40.28 at least ten days before taking any final action. The notice must state the effective date and
40.29 the reason for the termination.

40.30 (c) The employer may, within ten days from mailing or personal service of the notice,
40.31 file an appeal to the commissioner in the time, manner, method, and procedure provided by
40.32 the commissioner under subdivision 7.

(d) The payment of benefits must not be delayed during an employer's appeal of the revocation of approval of a private plan.

(e) If the commissioner revokes approval of an employer's private plan, that employer is ineligible to apply for approval of another private plan for a period of three years, beginning on the date of revocation.

Subd. 13. Employer penalties. (a) The commissioner may assess the following monetary penalties against an employer with an approved private plan found to have violated this chapter:

(1) \$1,000 for the first violation; and

(2) \$2,000 for the second, and each successive violation.

(b) The commissioner must waive collection of any penalty if the employer corrects the violation within 30 days of receiving a notice of the violation and the notice is for a first violation.

(c) The commissioner may waive collection of any penalty if the commissioner determines the violation to be an inadvertent error by the employer.

(d) Monetary penalties collected under this section shall be deposited in the family and medical benefit insurance account.

(e) Assessment of penalties under this subdivision may be appealed as provided by the commissioner under subdivision 7.

Subd. 14. Reports, information, and records. Employers with an approved private plan must maintain all reports, information, and records as relating to the private plan and claims for a period of six years from creation and provide to the commissioner upon request.

Subd. 15. Audit and investigation. The commissioner may investigate and audit plans approved under this section both before and after the plans are approved.

Sec. 16. [268B.11] SELF-EMPLOYED AND INDEPENDENT CONTRACTOR ELECTION OF COVERAGE.

Subdivision 1. Election of coverage. (a) A self-employed individual or independent contractor may file with the commissioner by electronic transmission in a format prescribed by the commissioner an application to be entitled to benefits under this chapter for a period not less than 104 consecutive calendar weeks. Upon the approval of the commissioner, sent by United States mail or electronic transmission, the individual is entitled to benefits under this chapter beginning the calendar quarter after the date of approval or beginning in a later

42.1 calendar quarter if requested by the self-employed individual or independent contractor.
42.2 The individual ceases to be entitled to benefits as of the first day of January of any calendar
42.3 year only if, at least 30 calendar days before the first day of January, the individual has filed
42.4 with the commissioner by electronic transmission in a format prescribed by the commissioner
42.5 a notice to that effect.

42.6 (b) The commissioner may terminate any application approved under this section with
42.7 30 calendar days' notice sent by United States mail or electronic transmission if the
42.8 self-employed individual is delinquent on any premiums due under this chapter. If an
42.9 approved application is terminated in this manner during the first 104 consecutive calendar
42.10 weeks of election, the self-employed individual remains obligated to pay the premium under
42.11 subdivision 3 for the remainder of that 104-week period.

42.12 Subd. 2. **Application.** A self-employed individual who applies for coverage under this
42.13 section must provide the commissioner with (1) the amount of the individual's net earnings
42.14 from self-employment, if any, from the two most recent taxable years and all tax documents
42.15 necessary to prove the accuracy of the amounts reported, and (2) any other documentation
42.16 the commissioner requires. A self-employed individual who is covered under this chapter
42.17 must annually provide the commissioner with the amount of the individual's net earnings
42.18 from self-employment within 30 days of filing a federal income tax return.

42.19 Subd. 3. **Premium.** A self-employed individual who elects to receive coverage under
42.20 this chapter must annually pay a premium equal to one-half the percentage in section
42.21 268B.14, subdivision 5, clause (1), times the lesser of:

42.22 (1) the individual's self-employment premium base; or

42.23 (2) the maximum earnings subject to the FICA Old-Age, Survivors, and Disability
42.24 Insurance tax.

42.25 Subd. 4. **Benefits.** Notwithstanding anything to the contrary, a self-employed individual
42.26 who has applied to and been approved for coverage by the commissioner under this section
42.27 is entitled to benefits on the same basis as an employee under this chapter, except that a
42.28 self-employed individual's weekly benefit amount under section 268B.04, subdivision 1,
42.29 must be calculated as a percentage of the self-employed individual's self-employment
42.30 premium base, rather than wages.

42.31 Sec. 17. **[268B.12] WAGE REPORTING.**

42.32 Subdivision 1. **Wage detail report.** (a) Each employer must submit, under the employer
42.33 premium account described in section 268B.13, a quarterly wage detail report by electronic

transmission, in a format prescribed by the commissioner. The report must include for each employee in covered employment during the calendar quarter, the employee's name, Social Security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer must report 40 hours worked for each week any duties were performed by a full-time employee and must report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. In addition, the wage detail report must include the number of employees employed during the payroll period that includes the 12th day of each calendar month and, if required by the commissioner, the report must be broken down by business location and separate business unit. The report is due and must be received by the commissioner on or before the last day of the month following the end of the calendar quarter. The commissioner may delay the due date on a specific calendar quarter in the event the department is unable to accept wage detail reports electronically.

(b) The employer may report the wages paid to the next lower whole dollar amount.

(c) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted from being reported by federal law.

(d) A wage detail report must be submitted for each calendar quarter even though no wages were paid, unless the business has been terminated.

Subd. 2. **Electronic transmission of report required.** Each employer must submit the quarterly wage detail report by electronic transmission in a format prescribed by the commissioner. The commissioner has the discretion to accept wage detail reports that are submitted by any other means or the commissioner may return the report submitted by other than electronic transmission to the employer, and reports returned are considered as not submitted and the late fees under subdivision 3 may be imposed.

Subd. 3. **Failure to timely file report; late fees.** (a) Any employer that fails to submit the quarterly wage detail report when due must pay a late fee of \$10 per employee, computed based upon the highest of:

(1) the number of employees reported on the last wage detail report submitted;

(2) the number of employees reported in the corresponding quarter of the prior calendar year; or

(3) if no wage detail report has ever been submitted, the number of employees listed at the time of employer registration.

The late fee is canceled if the wage detail report is received within 30 calendar days after a demand for the report is sent to the employer by mail or electronic transmission. A late fee assessed an employer may not be canceled more than twice each 12 months. The amount of the late fee assessed may not be less than \$250.

(b) If the wage detail report is not received in a manner and format prescribed by the commissioner within 30 calendar days after demand is sent under paragraph (a), the late fee assessed under paragraph (a) doubles and a renewed demand notice and notice of the increased late fee will be sent to the employer by mail or electronic transmission.

(c) Late fees due under this subdivision may be canceled, in whole or in part, under section 268B.16.

Subd. 4. **Missing or erroneous information.** (a) Any employer that submits the wage detail report, but fails to include all required employee information or enters erroneous information, is subject to an administrative service fee of \$25 for each employee for whom the information is partially missing or erroneous.

(b) Any employer that submits the wage detail report, but fails to include an employee, is subject to an administrative service fee equal to two percent of the total wages for each employee for whom the information is completely missing.

Subd. 5. **Fees.** The fees provided for in subdivisions 3 and 4 are in addition to interest and other penalties imposed by this chapter and are collected in the same manner as delinquent taxes and credited to the family and medical benefit insurance account.

Sec. 18. **[268B.13] EMPLOYER PREMIUM ACCOUNTS.**

The commissioner must maintain a premium account for each employer. The commissioner must assess the premium account for all the premiums due under section 268B.14, and credit the family and medical benefit insurance account with all premiums paid.

Sec. 19. **[268B.14] PREMIUMS.**

Subdivision 1. **Payments.** (a) Family and medical leave premiums accrue and become payable by each employer for each calendar year on the taxable wages that the employer paid to employees in covered employment.

Each employer must pay premiums quarterly, at the premium rate defined under this section, on the taxable wages paid to each employee. The commissioner must compute the premium due from the wage detail report required under section 268B.12 and notify the employer of the premium due. The premiums must be paid to the family and medical benefit insurance account and must be received by the department on or before the last day of the month following the end of the calendar quarter.

(b) If for any reason the wages on the wage detail report under section 268B.12 are adjusted for any quarter, the commissioner must recompute the premiums due for that quarter and assess the employer for any amount due or credit the employer as appropriate.

Subd. 2. Payments by electronic payment required. (a) Every employer must make any payments due under this chapter by electronic payment.

(b) All third-party processors, paying on behalf of a client company, must make any payments due under this chapter by electronic payment.

(c) Regardless of paragraph (a) or (b), the commissioner has the discretion to accept payment by other means.

Subd. 3. Employee charge back. Notwithstanding section 177.24, subdivision 4, or 181.06, subdivision 1, employers and covered business entities may deduct up to 50 percent of annual premiums paid under this section from employee wages. Such deductions for any given employee must be in equal proportion to the premiums paid based on the wages of that employee, and all employees of an employer must be subject to the same percentage deduction. Deductions under this section must not cause an employee's wage, after the deduction, to fall below the rate required to be paid to the worker by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract, or other legal authority, whichever rate of pay is greater.

Subd. 4. Wages and payments subject to premium. The maximum wages subject to premium in a calendar year is equal to the maximum earnings in that year subject to the FICA Old-Age, Survivors, and Disability Insurance tax.

Subd. 5. Annual premium rates. The employer premium rates for the calendar year beginning January 1, 2023, shall be as follows:

(1) for employers participating in both family and medical benefit programs, 0.6 percent;

(2) for an employer participating in only the medical benefit program and with an approved private plan for the family benefit program, 0.486 percent; and

(3) for an employer participating in only the family benefit program and with an approved private plan for the medical benefit program, 0.114 percent.

Subd. 6. **Premium rate adjustments.** (a) Beginning January 1, 2026, and each calendar year thereafter, the commissioner must adjust the annual premium rates using the formula in paragraph (b).

(b) To calculate the employer rates for a calendar year, the commissioner must:

(1) multiply 1.45 times the amount disbursed from the family and medical benefit insurance account for the 52-week period ending September 30 of the prior year;

(2) subtract the amount in the family and medical benefit insurance account on that September 30 from the resulting figure;

(3) divide the resulting figure by twice the total wages in covered employment of employees of employers without approved private plans under section 268B.10 for either the family or medical benefit program. For employers with an approved private plan for either the medical benefit program or the family benefit program, but not both, count only the proportion of wages in covered employment associated with the program for which the employer does not have an approved private plan; and

(4) round the resulting figure down to the nearest one-hundredth of one percent.

(c) The commissioner must apportion the premium rate between the family and medical benefit programs based on the relative proportion of expenditures for each program during the preceding year.

Subd. 7. **Deposit of premiums.** All premiums collected under this section must be deposited into the family and medical benefit insurance account.

Subd. 8. **Nonpayment of premiums by employer.** The failure of an employer to pay premiums does not impact the right of an employee to benefits, or any other right, under this chapter.

Sec. 20. **[268B.145] INCOME TAX WITHHOLDING.**

If the Internal Revenue Service determines that benefits are subject to federal income tax, and an applicant elects to have federal income tax deducted and withheld from the applicant's benefits, the commissioner must deduct and withhold the amount specified in the Internal Revenue Code in a manner consistent with state law.

47.1 Sec. 21. **[268B.15] COLLECTION OF PREMIUMS.**

47.2 Subdivision 1. **Amount computed presumed correct.** Any amount due from an
47.3 employer, as computed by the commissioner, is presumed to be correctly determined and
47.4 assessed, and the burden is upon the employer to show its incorrectness. A statement by the
47.5 commissioner of the amount due is admissible in evidence in any court or administrative
47.6 proceeding and is prima facie evidence of the facts in the statement.

47.7 Subd. 2. **Priority of payments.** (a) Any payment received from an employer must be
47.8 applied in the following order:

47.9 (1) family and medical leave premiums under this chapter; then

47.10 (2) interest on past due premiums; then

47.11 (3) penalties, late fees, administrative service fees, and costs.

47.12 (b) Paragraph (a) is the priority used for all payments received from an employer,
47.13 regardless of how the employer may designate the payment to be applied, except when:

47.14 (1) there is an outstanding lien and the employer designates that the payment made
47.15 should be applied to satisfy the lien;

47.16 (2) the payment is specifically designated by the employer to be applied to an outstanding
47.17 overpayment of benefits of an applicant;

47.18 (3) a court or administrative order directs that the payment be applied to a specific
47.19 obligation;

47.20 (4) a preexisting payment plan provides for the application of payment; or

47.21 (5) the commissioner, under the compromise authority of section 268B.16, agrees to
47.22 apply the payment to a different priority.

47.23 Subd. 3. **Estimating the premium due.** Only if an employer fails to make all necessary
47.24 records available for an audit under section 268B.21 and the commissioner has reason to
47.25 believe the employer has not reported all the required wages on the quarterly wage detail
47.26 reports, may the commissioner then estimate the amount of premium due and assess the
47.27 employer the estimated amount due.

47.28 Subd. 4. **Costs.** (a) Any employer and any applicant subject to section 268B.185,
47.29 subdivision 2, that fails to pay any amount when due under this chapter is liable for any
47.30 filing fees, recording fees, sheriff fees, costs incurred by referral to any public or private
47.31 collection agency, or litigation costs, including attorney fees, incurred in the collection of
47.32 the amounts due.

(b) If any tendered payment of any amount due is not honored when presented to a financial institution for payment, any costs assessed the department by the financial institution and a fee of \$25 must be assessed to the person.

(c) Costs and fees collected under this subdivision are credited to the enforcement account under section 268B.185, subdivision 3.

Subd. 5. **Interest on amounts past due.** If any amounts due from an employer under this chapter are not received on the date due, the commissioner must assess interest on any amount that remains unpaid. Interest is assessed at the rate of one percent per month or any part of a month. Interest is not assessed on unpaid interest. Interest collected under this subdivision is credited to the account.

Subd. 6. **Interest on judgments.** Regardless of section 549.09, if a judgment is entered upon any past due amounts from an employer under this chapter, the unpaid judgment bears interest at the rate specified in subdivision 5 until the date of payment.

Subd. 7. **Credit adjustments; refunds.** (a) If an employer makes an application for a credit adjustment of any amount paid under this chapter within four years of the date that the payment was due, in a manner and format prescribed by the commissioner, and the commissioner determines that the payment or any portion thereof was erroneous, the commissioner must make an adjustment and issue a credit without interest. If a credit cannot be used, the commissioner must refund, without interest, the amount erroneously paid. The commissioner, on the commissioner's own motion, may make a credit adjustment or refund under this subdivision.

(b) Any refund returned to the commissioner is considered unclaimed property under chapter 345.

(c) If a credit adjustment or refund is denied in whole or in part, a determination of denial must be sent to the employer by mail or electronic transmission. The determination of denial is final unless an employer files an appeal within 20 calendar days after sending. Proceedings on the appeal are conducted in accordance with section 268B.08.

(d) If an employer receives a credit adjustment or refund under this section, the employer must determine the amount of any overpayment attributable to a deduction from employee wages under section 268B.14, subdivision 3, and return any amount erroneously deducted to each affected employee.

Subd. 8. **Priorities under legal dissolutions or distributions.** In the event of any distribution of an employer's assets according to an order of any court, including any

receivership, assignment for benefit of creditors, adjudicated insolvency, or similar proceeding, premiums then or thereafter due must be paid in full before all other claims except claims for wages of not more than \$1,000 per former employee, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy under federal law, premiums then or thereafter due are entitled to the priority provided in that law for taxes due in any state.

Sec. 22. **[268B.155] CHILD SUPPORT DEDUCTION FROM BENEFITS.**

Subdivision 1. Definitions. As used in this section:

(1) "child support agency" means the public agency responsible for child support enforcement, including federally approved comprehensive Tribal IV-D programs; and

(2) "child support obligations" means obligations that are being enforced by a child support agency in accordance with a plan described in United States Code, title 42, sections 454 and 455 of the Social Security Act that has been approved by the secretary of health and human services under part D of title IV of the Social Security Act. This does not include any type of spousal maintenance or foster care payments.

Subd. 2. Notice upon application. In an application for family or medical leave benefits, the applicant must disclose if child support obligations are owed and, if so, in what state and county. If child support obligations are owed, the commissioner must, if the applicant establishes a benefit account, notify the child support agency.

Subd. 3. Withholding of benefit. The commissioner must deduct and withhold from any family or medical leave benefits payable to an applicant who owes child support obligations:

(1) the amount required under a proper order of a court or administrative agency; or

(2) if clause (1) is not applicable, the amount determined under an agreement under United States Code, title 42, section 454 (20)(B)(i), of the Social Security Act; or

(3) if clause (1) or (2) is not applicable, the amount specified by the applicant.

Subd. 4. Payment. Any amount deducted and withheld must be paid to the child support agency, must for all purposes be treated as if it were paid to the applicant as family or medical leave benefits and paid by the applicant to the child support agency in satisfaction of the applicant's child support obligations.

50.1 Subd. 5. **Payment of costs.** The child support agency must pay the costs incurred by
50.2 the commissioner in the implementation and administration of this section and sections
50.3 518A.50 and 518A.53.

50.4 Sec. 23. **[268B.16] COMPROMISE.**

50.5 (a) The commissioner may compromise in whole or in part any action, determination,
50.6 or decision that affects only an employer and not an applicant. This paragraph applies if it
50.7 is determined by a court of law, or a confession of judgment, that an applicant, while
50.8 employed, wrongfully took from the employer \$500 or more in money or property.

50.9 (b) The commissioner may at any time compromise any premium or reimbursement due
50.10 from an employer under this chapter.

50.11 (c) Any compromise involving an amount over \$10,000 must be authorized by an attorney
50.12 licensed to practice law in Minnesota who is an employee of the department designated by
50.13 the commissioner for that purpose.

50.14 (d) Any compromise must be in the best interest of the state of Minnesota.

50.15 Sec. 24. **[268B.17] ADMINISTRATIVE COSTS.**

50.16 From July 1, 2023, through December 31, 2023, the commissioner may spend up to
50.17 seven percent of premiums collected under section 268B.15 for administration of this chapter.
50.18 Beginning January 1, 2024, and each calendar year thereafter, the commissioner may spend
50.19 up to seven percent of projected benefit payments for that calendar year for the administration
50.20 of this chapter. The department may enter into interagency agreements with the Department
50.21 of Labor and Industry, including agreements to transfer funds, subject to the limit in this
50.22 section, for the Department of Labor and Industry to fulfill its enforcement authority of this
50.23 chapter.

50.24 Sec. 25. **[268B.18] PUBLIC OUTREACH.**

50.25 Beginning in fiscal year 2023, the commissioner must use at least 0.5 percent of revenue
50.26 collected under this chapter for the purpose of outreach, education, and technical assistance
50.27 for employees, employers, and self-employed individuals eligible to elect coverage under
50.28 section 268B.11. The department may enter into interagency agreements with the Department
50.29 of Labor and Industry, including agreements to transfer funds, subject to the limit in section
50.30 268B.17, to accomplish the requirements of this section. At least one-half of the amount
50.31 spent under this section must be used for grants to community-based groups.

51.1 Sec. 26. **[268B.185] BENEFIT OVERPAYMENTS.**

51.2 Subdivision 1. Repaying an overpayment. (a) Any applicant who (1) because of a
51.3 determination or amended determination issued under this chapter, or (2) because of a
51.4 benefit law judge's decision under section 268B.08, has received any family or medical
51.5 leave benefits that the applicant was held not entitled to, is overpaid the benefits and must
51.6 promptly repay the benefits to the family and medical benefit insurance account.

51.7 (b) If the applicant fails to repay the benefits overpaid, including any penalty and interest
51.8 assessed under subdivisions 2 and 4, the total due may be collected by the methods allowed
51.9 under state and federal law.

51.10 Subd. 2. Overpayment because of misrepresentation. (a) An applicant has committed
51.11 misrepresentation if the applicant is overpaid benefits by making a false statement or
51.12 representation without a good faith belief as to the correctness of the statement or
51.13 representation.

51.14 (b) After the discovery of facts indicating misrepresentation, the commissioner must
51.15 issue a determination of overpayment penalty assessing a penalty equal to 20 percent of the
51.16 amount overpaid. This penalty is in addition to penalties under section 268B.19.

51.17 (c) Unless the applicant files an appeal within 20 calendar days after the sending of a
51.18 determination of overpayment penalty to the applicant by mail or electronic transmission,
51.19 the determination is final. Proceedings on the appeal are conducted in accordance with
51.20 section 268B.08.

51.21 (d) A determination of overpayment penalty must state the methods of collection the
51.22 commissioner may use to recover the overpayment, penalty, and interest assessed. Money
51.23 received in repayment of overpaid benefits, penalties, and interest is first applied to the
51.24 benefits overpaid, second to the penalty amount due, and third to any interest due.

51.25 (e) The department is authorized to issue a determination of overpayment penalty under
51.26 this subdivision within 48 months of the establishment of the benefit account upon which
51.27 the benefits were obtained through misrepresentation.

51.28 Subd. 3. Family and medical benefit insurance enforcement account created. The
51.29 family and medical benefit insurance enforcement account is created in the state treasury.
51.30 Any penalties and interest collected under this section shall be deposited into the account
51.31 under this subdivision and shall be used only for the purposes of administering and enforcing
51.32 this chapter. Only the commissioner may authorize expenditures from the account under
51.33 this subdivision.

52.1 Subd. 4. **Interest.** For any family and medical leave benefits obtained by
52.2 misrepresentation, and any penalty amounts assessed under subdivision 2, the commissioner
52.3 must assess interest on any amount that remains unpaid beginning 30 calendar days after
52.4 the date of a determination of overpayment penalty. Interest is assessed at the rate of one
52.5 percent per month or any part of a month. A determination of overpayment penalty must
52.6 state that interest will be assessed. Interest is not assessed on unpaid interest. Interest collected
52.7 under this subdivision is credited to the family and medical benefit insurance enforcement
52.8 account.

52.9 Subd. 5. **Offset of benefits.** The commissioner may offset from any future family and
52.10 medical leave benefits otherwise payable the amount of a nonmisrepresentation overpayment.
52.11 Except when the nonmisrepresentation overpayment resulted because the applicant failed
52.12 to report deductible earnings or deductible or benefit delaying payments, no single offset
52.13 may exceed 50 percent of the amount of the payment from which the offset is made.

52.14 Subd. 6. **Cancellation of overpayments.** (a) If family and medical leave benefits overpaid
52.15 for reasons other than misrepresentation are not repaid or offset from subsequent benefits
52.16 within six years after the date of the determination or decision holding the applicant overpaid,
52.17 the commissioner must cancel the overpayment balance, and no administrative or legal
52.18 proceedings may be used to enforce collection of those amounts.

52.19 (b) If family and medical leave benefits overpaid because of misrepresentation including
52.20 penalties and interest are not repaid within ten years after the date of the determination of
52.21 overpayment penalty, the commissioner must cancel the overpayment balance and any
52.22 penalties and interest due, and no administrative or legal proceeding may be used to enforce
52.23 collection of those amounts.

52.24 (c) The commissioner may cancel at any time any overpayment, including penalties and
52.25 interest that the commissioner determines is uncollectible because of death or bankruptcy.

52.26 Subd. 7. **Court fees; collection fees.** (a) If the department is required to pay any court
52.27 fees in an attempt to enforce collection of overpaid family and medical leave benefits,
52.28 penalties, or interest, the amount of the court fees may be added to the total amount due.

52.29 (b) If an applicant who has been overpaid family and medical leave benefits because of
52.30 misrepresentation seeks to have any portion of the debt discharged under the federal
52.31 bankruptcy code, and the department files an objection in bankruptcy court to the discharge,
52.32 the cost of any court fees may be added to the debt if the bankruptcy court does not discharge
52.33 the debt.

(c) If the Internal Revenue Service assesses the department a fee for offsetting from a federal tax refund the amount of any overpayment, including penalties and interest, the amount of the fee may be added to the total amount due. The offset amount must be put in the family and medical benefit insurance enforcement account and that amount credited to the total amount due from the applicant.

Subd. 8. **Collection of overpayments.** (a) The commissioner has discretion regarding the recovery of any overpayment for reasons other than misrepresentation. Regardless of any law to the contrary, the commissioner is not required to refer any overpayment for reasons other than misrepresentation to a public or private collection agency, including agencies of this state.

(b) Amounts overpaid for reasons other than misrepresentation are not considered a "debt" to the state of Minnesota for purposes of any reporting requirements to the commissioner of management and budget.

(c) A pending appeal under section 268B.08 does not suspend the assessment of interest, penalties, or collection of an overpayment.

(d) Section 16A.626 applies to the repayment by an applicant of any overpayment, penalty, or interest.

Sec. 27. [268B.19] APPLICANT ADMINISTRATIVE PENALTIES.

(a) Any applicant who makes a false statement or representation without a good faith belief as to the correctness of the statement or representation in order to obtain or in an attempt to obtain benefits may be assessed, in addition to any other penalties, an administrative penalty of being ineligible for benefits for 13 to 104 weeks.

(b) A determination of ineligibility setting out the weeks the applicant is ineligible must be sent to the applicant by mail or electronic transmission. The department is authorized to issue a determination of ineligibility under this subdivision within 48 months of the establishment of the benefit account upon which the benefits were obtained, or attempted to be obtained. Unless an appeal is filed within 20 calendar days of sending, the determination is final. Proceedings on the appeal are conducted in accordance with section 268B.08.

Sec. 28. [268B.20] EMPLOYER MISCONDUCT; PENALTY.

(a) The commissioner must penalize an employer if that employer or any employee, officer, or agent of that employer is in collusion with any applicant for the purpose of

54.1 assisting the applicant in receiving benefits fraudulently. The penalty is \$500 or the amount
54.2 of benefits determined to be overpaid, whichever is greater.

54.3 (b) The commissioner must penalize an employer if that employer or any employee,
54.4 officer, or agent of that employer:

54.5 (1) made a false statement or representation knowing it to be false;

54.6 (2) made a false statement or representation without a good-faith belief as to the
54.7 correctness of the statement or representation; or

54.8 (3) knowingly failed to disclose a material fact.

54.9 (c) The penalty is the greater of \$500 or 50 percent of the following resulting from the
54.10 employer's action:

54.11 (1) the amount of any overpaid benefits to an applicant;

54.12 (2) the amount of benefits not paid to an applicant that would otherwise have been paid;
54.13 or

54.14 (3) the amount of any payment required from the employer under this chapter that was
54.15 not paid.

54.16 (d) Penalties must be paid within 30 calendar days of issuance of the determination of
54.17 penalty and credited to the family and medical benefit insurance account.

54.18 (e) The determination of penalty is final unless the employer files an appeal within 30
54.19 calendar days after the sending of the determination of penalty to the employer by United
54.20 States mail or electronic transmission.

54.21 **Sec. 29. [268B.21] RECORDS; AUDITS.**

54.22 **Subdivision 1. Employer records; audits.** (a) Each employer must keep true and accurate
54.23 records on individuals performing services for the employer, containing the information
54.24 the commissioner may require under this chapter. The records must be kept for a period of
54.25 not less than four years in addition to the current calendar year.

54.26 (b) For the purpose of administering this chapter, the commissioner has the power to
54.27 audit, examine, or cause to be supplied or copied, any books, correspondence, papers,
54.28 records, or memoranda that are the property of, or in the possession of, an employer or any
54.29 other person at any reasonable time and as often as may be necessary. Subpoenas may be
54.30 issued under section 268B.22 as necessary, for an audit.

(c) An employer or other person that refuses to allow an audit of its records by the department or that fails to make all necessary records available for audit in the state upon request of the commissioner may be assessed an administrative penalty of \$500. The penalty collected is credited to the family and medical benefit insurance account.

(d) An employer, or other person, that fails to provide a weekly breakdown of money earned by an applicant upon request of the commissioner, information necessary for the detection of applicant misrepresentation under section 268B.185, subdivision 2, may be assessed an administrative penalty of \$100. Any notice requesting a weekly breakdown must clearly state that a \$100 penalty may be assessed for failure to provide the information. The penalty collected is credited to the family and medical benefit insurance account.

Subd. 2. Department records; destruction. (a) The commissioner may make summaries, compilations, duplications, or reproductions of any records pertaining to this chapter that the commissioner considers advisable for the preservation of the information.

(b) Regardless of any law to the contrary, the commissioner may destroy any records that are no longer necessary for the administration of this chapter. In addition, the commissioner may destroy any record from which the information has been electronically captured and stored.

Sec. 30. [268B.22] SUBPOENAS; OATHS.

(a) The commissioner or benefit judge has authority to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of individuals and the production of documents and other personal property necessary in connection with the administration of this chapter.

(b) Individuals subpoenaed, other than applicants or officers and employees of an employer that is the subject of the inquiry, are paid witness fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena is enforceable through the district court in Ramsey County.

Sec. 31. [268B.23] LIEN; LEVY; SETOFF; AND CIVIL ACTION.

Subdivision 1. Lien. (a) Any amount due under this chapter, from an applicant or an employer, becomes a lien upon all the property, within this state, both real and personal, of the person liable, from the date of assessment. For the purposes of this section, "date of assessment" means the date the obligation was due.

(b) The lien is not enforceable against any purchaser, mortgagee, pledgee, holder of a Uniform Commercial Code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed with the county recorder of the county where the property is situated, or in the case of personal property belonging to a nonresident person in the Office of the Secretary of State. When the notice of lien is filed with the county recorder, the fee for filing and indexing is as provided in sections 272.483 and 272.484.

(c) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner, may be filed with the county recorder or the secretary of state by mail, personal delivery, or electronic transmission into the computerized filing system of the secretary of state. The secretary of state must, on any notice filed with that office, transmit the notice electronically to the appropriate county recorder. The filing officer, whether the county recorder or the secretary of state, must endorse and index a printout of the notice as if the notice had been mailed or delivered.

(d) County recorders and the secretary of state must enter information on lien notices, renewals, and releases into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered into the central database before the close of the working day following the day of the original data entry by the commissioner.

(e) The lien imposed on personal property, even though properly filed, is not enforceable against a purchaser of tangible personal property purchased at retail or personal property listed as exempt in sections 550.37, 550.38, and 550.39.

(f) A notice of lien filed has priority over any security interest arising under chapter 336, article 9, that is perfected prior in time to the lien imposed by this subdivision, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of lien is filed; and

(2) the property comes into existence after the 45th calendar day following the day the notice of lien is filed, or after the secured party has actual notice or knowledge of the lien filing, whichever is earlier.

(g) The lien is enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed before expiration for an additional ten years.

57.1 (h) The lien is enforceable by levy under subdivision 2 or by judgment lien foreclosure
57.2 under chapter 550.

57.3 (i) The lien may be imposed upon property defined as homestead property in chapter
57.4 510 but may be enforced only upon the sale, transfer, or conveyance of the homestead
57.5 property.

57.6 (j) The commissioner may sell and assign to a third party the commissioner's right of
57.7 redemption in specific real property for liens filed under this subdivision. The assignee is
57.8 limited to the same rights of redemption as the commissioner, except that in a bankruptcy
57.9 proceeding, the assignee does not obtain the commissioner's priority. Any proceeds from
57.10 the sale of the right of redemption are credited to the family and medical benefit insurance
57.11 account.

57.12 Subd. 2. Levy. (a) If any amount due under this chapter, from an applicant or an employer,
57.13 is not paid when due, the amount may be collected by the commissioner by direct levy upon
57.14 all property and rights of property of the person liable for the amount due except property
57.15 exempt from execution under section 550.37. For the purposes of this section, "levy" includes
57.16 the power of distraint and seizure by any means.

57.17 (b) In addition to a direct levy, the commissioner may issue a warrant to the sheriff of
57.18 any county who must proceed within 60 calendar days to levy upon the property or rights
57.19 to property of the delinquent person within the county, except property exempt under section
57.20 550.37. The sheriff must sell that property necessary to satisfy the total amount due, together
57.21 with the commissioner's and sheriff's costs. The sales are governed by the law applicable
57.22 to sales of like property on execution of a judgment.

57.23 (c) Notice and demand for payment of the total amount due must be mailed to the
57.24 delinquent person at least ten calendar days before action being taken under paragraphs (a)
57.25 and (b).

57.26 (d) If the commissioner has reason to believe that collection of the amount due is in
57.27 jeopardy, notice and demand for immediate payment may be made. If the total amount due
57.28 is not paid, the commissioner may proceed to collect by direct levy or issue a warrant without
57.29 regard to the ten calendar day period.

57.30 (e) In executing the levy, the commissioner must have all of the powers provided in
57.31 chapter 550 or any other law that provides for execution against property in this state. The
57.32 sale of property levied upon and the time and manner of redemption is as provided in chapter
57.33 550. The seal of the court is not required. The levy may be made whether or not the
57.34 commissioner has commenced a legal action for collection.

58.1 (f) Where any assessment has been made by the commissioner, the property seized for
58.2 collection of the total amount due must not be sold until any determination of liability has
58.3 become final. No sale may be made unless a portion of the amount due remains unpaid for
58.4 a period of more than 30 calendar days after the determination of liability becomes final.
58.5 Seized property may be sold at any time if:

58.6 (1) the delinquent person consents in writing to the sale; or

58.7 (2) the commissioner determines that the property is perishable or may become greatly
58.8 reduced in price or value by keeping, or that the property cannot be kept without great
58.9 expense.

58.10 (g) Where a levy has been made to collect the amount due and the property seized is
58.11 properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505
58.12 and maintained under full supervision of the court, the property may not be sold until the
58.13 probate proceedings are completed or until the court orders.

58.14 (h) The property seized must be returned if the owner:

58.15 (1) gives a surety bond equal to the appraised value of the owner's interest in the property,
58.16 as determined by the commissioner; or

58.17 (2) deposits with the commissioner security in a form and amount the commissioner
58.18 considers necessary to insure payment of the liability.

58.19 (i) If a levy or sale would irreparably injure rights in property that the court determines
58.20 superior to rights of the state, the court may grant an injunction to prohibit the enforcement
58.21 of the levy or to prohibit the sale.

58.22 (j) Any person who fails or refuses to surrender without reasonable cause any property
58.23 or rights to property subject to levy is personally liable in an amount equal to the value of
58.24 the property or rights not so surrendered, but not exceeding the amount due.

58.25 (k) If the commissioner has seized the property of any individual, that individual may,
58.26 upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable
58.27 relief before the district court for the release of the property upon terms and conditions the
58.28 court considers equitable.

58.29 (l) Any person in control or possession of property or rights to property upon which a
58.30 levy has been made who surrenders the property or rights to property, or who pays the
58.31 amount due is discharged from any obligation or liability to the person liable for the amount
58.32 due with respect to the property or rights to property.

59.1 (m) The notice of any levy may be served personally or by mail.

59.2 (n) The commissioner may release the levy upon all or part of the property or rights to
59.3 property levied upon if the commissioner determines that the release will facilitate the
59.4 collection of the liability, but the release does not prevent any subsequent levy. If the
59.5 commissioner determines that property has been wrongfully levied upon, the commissioner
59.6 must return:

59.7 (1) the specific property levied upon, at any time; or

59.8 (2) an amount of money equal to the amount of money levied upon, at any time before
59.9 the expiration of nine months from the date of levy.

59.10 (o) Regardless of section 52.12, a levy upon a person's funds on deposit in a financial
59.11 institution located in this state, has priority over any unexercised right of setoff of the
59.12 financial institution to apply the levied funds toward the balance of an outstanding loan or
59.13 loans owed by the person to the financial institution. A claim by the financial institution
59.14 that it exercised its right to setoff before the levy must be substantiated by evidence of the
59.15 date of the setoff, and verified by an affidavit from a corporate officer of the financial
59.16 institution. For purposes of determining the priority of any levy under this subdivision, the
59.17 levy is treated as if it were an execution under chapter 550.

59.18 Subd. 3. **Right of setoff.** (a) Upon certification by the commissioner to the commissioner
59.19 of management and budget, or to any state agency that disburses its own funds, that a person,
59.20 applicant, or employer has a liability under this chapter, and that the state has purchased
59.21 personal services, supplies, contract services, or property from that person, the commissioner
59.22 of management and budget or the state agency must set off and pay to the commissioner an
59.23 amount sufficient to satisfy the unpaid liability from funds appropriated for payment of the
59.24 obligation of the state otherwise due the person. No amount may be set off from any funds
59.25 exempt under section 550.37 or funds due an individual who receives assistance under
59.26 chapter 256.

59.27 (b) All funds, whether general or dedicated, are subject to setoff.

59.28 (c) Regardless of any law to the contrary, the commissioner has first priority to setoff
59.29 from any funds otherwise due from the department to a delinquent person.

59.30 Subd. 4. **Collection by civil action.** (a) Any amount due under this chapter, from an
59.31 applicant or employer, may be collected by civil action in the name of the state of Minnesota.
59.32 Civil actions brought under this subdivision must be heard as provided under section 16D.14.
59.33 In any action, judgment must be entered in default for the relief demanded in the complaint

60.1 without proof, together with costs and disbursements, upon the filing of an affidavit of
60.2 default.

60.3 (b) Any person that is not a resident of this state and any resident person removed from
60.4 this state, is considered to appoint the secretary of state as its agent for the acceptance of
60.5 process in any civil action. The commissioner must file process with the secretary of state,
60.6 together with a payment of a fee of \$15 and that service is considered sufficient service and
60.7 has the same force and validity as if served personally within this state. Notice of the service
60.8 of process, together with a copy of the process, must be sent by certified mail to the person's
60.9 last known address. An affidavit of compliance with this subdivision, and a copy of the
60.10 notice of service must be appended to the original of the process and filed in the court.

60.11 (c) No court filing fees, docketing fees, or release of judgment fees may be assessed
60.12 against the state for actions under this subdivision.

60.13 Subd. 5. **Injunction forbidden.** No injunction or other legal action to prevent the
60.14 determination, assessment, or collection of any amounts due under this chapter, from an
60.15 applicant or employer, are allowed.

60.16 Sec. 32. **[268B.24] CONCILIATION SERVICES.**

60.17 The Department of Labor and Industry may offer conciliation services to employers and
60.18 employees to resolve disputes concerning alleged violations of employment protections
60.19 identified in section 268B.09.

60.20 Sec. 33. **[268B.25] ANNUAL REPORTS.**

60.21 (a) Beginning on or before December 1, 2023, the commissioner must annually report
60.22 to the Department of Management and Budget and the house of representatives and senate
60.23 committee chairs with jurisdiction over this chapter on program administrative expenditures
60.24 and revenue collection for the prior fiscal year, including but not limited to:

60.25 (1) total revenue raised through premium collection;

60.26 (2) the number of self-employed individuals or independent contractors electing coverage
60.27 under section 268B.11 and amount of associated revenue;

60.28 (3) the number of covered business entities paying premiums under this chapter and
60.29 associated revenue;

60.30 (4) administrative expenditures including transfers to other state agencies expended in
60.31 the administration of the chapter;

61.1 (5) summary of contracted services expended in the administration of this chapter;

61.2 (6) grant amounts and recipients under sections 268B.29 and 268B.18;

61.3 (7) an accounting of required outreach expenditures;

61.4 (8) summary of private plan approvals including the number of employers and employees

61.5 covered under private plans; and

61.6 (9) adequacy and use of the private plan approval and oversight fee.

61.7 (b) Beginning on or before December 1, 2023, the commissioner must annually publish

61.8 a publicly available report providing the following information for the previous fiscal year:

61.9 (1) total eligible claims;

61.10 (2) the number and percentage of claims attributable to each category of benefit;

61.11 (3) claimant demographics by age, gender, average weekly wage, occupation, and the

61.12 type of leave taken;

61.13 (4) the percentage of claims denied and the reasons therefor, including but not limited

61.14 to insufficient information and ineligibility and the reason therefor;

61.15 (5) average weekly benefit amount paid for all claims and by category of benefit;

61.16 (6) changes in the benefits paid compared to previous fiscal years;

61.17 (7) processing times for initial claims processing, initial determinations, and final

61.18 decisions;

61.19 (8) average duration for cases completed; and

61.20 (9) the number of cases remaining open at the close of such year.

61.21 **Sec. 34. [268B.26] NOTICE REQUIREMENTS.**

61.22 (a) Each employer must post in a conspicuous place on each of its premises a workplace

61.23 notice prepared or approved by the commissioner providing notice of benefits available

61.24 under this chapter. The required workplace notice must be in English and each language

61.25 other than English which is the primary language of five or more employees or independent

61.26 contractors of that workplace, if such notice is available from the department.

61.27 (b) Each employer must issue to each employee not more than 30 days from the beginning

61.28 date of the employee's employment, or 30 days before premium collection begins, whichever

61.29 is later, the following written information provided or approved by the department in the

61.30 primary language of the employee:

- 62.1 (1) an explanation of the availability of family and medical leave benefits provided under
62.2 this chapter, including rights to reinstatement and continuation of health insurance;
- 62.3 (2) the amount of premium deductions made by the employer under this chapter;
- 62.4 (3) the employer's premium amount and obligations under this chapter;
- 62.5 (4) the name and mailing address of the employer;
- 62.6 (5) the identification number assigned to the employer by the department;
- 62.7 (6) instructions on how to file a claim for family and medical leave benefits;
- 62.8 (7) the mailing address, e-mail address, and telephone number of the department; and
- 62.9 (8) any other information required by the department.

62.10 Delivery is made when an employee provides written acknowledgment of receipt of the
62.11 information, or signs a statement indicating the employee's refusal to sign such
62.12 acknowledgment.

62.13 (c) Each employer shall provide to each independent contractor with whom it contracts,
62.14 at the time such contract is made or, for existing contracts, within 30 days of the effective
62.15 date of this section, the following written information provided or approved by the department
62.16 in the self-employed individual's primary language:

- 62.17 (1) the address and telephone number of the department; and
- 62.18 (2) any other information required by the department.

62.19 (d) An employer that fails to comply with this subdivision may be issued, for a first
62.20 violation, a civil penalty of \$50 per employee and per independent contractor with whom
62.21 it has contracted, and for each subsequent violation, a civil penalty of \$300 per employee
62.22 or self-employed individual with whom it has contracted. The employer shall have the
62.23 burden of demonstrating compliance with this section.

62.24 (e) Employer notice to an employee under this section may be provided in paper or
62.25 electronic format. For notice provided in electronic format only, the employer must provide
62.26 employee access to an employer-owned computer during an employee's regular working
62.27 hours to review and print required notices.

62.28 **Sec. 35. [268B.27] RELATIONSHIP TO OTHER LEAVE; CONSTRUCTION.**

62.29 Subdivision 1. **Concurrent leave.** An employer may require leave taken under this
62.30 chapter to run concurrently with leave taken for the same purpose under section 181.941

63.1 or the Family and Medical Leave Act, United States Code, title 29, sections 2601 to 2654,
63.2 as amended.

63.3 Subd. 2. **Construction.** Nothing in this chapter shall be construed to:

63.4 (1) allow an employer to compel an employee to exhaust accumulated sick, vacation,
63.5 or personal time before or while taking leave under this chapter;

63.6 (2) except as provided under section 268B.01, subdivision 37, prohibit an employer
63.7 from providing additional benefits, including but not limited to covering the portion of
63.8 earnings not provided under this chapter during periods of leave covered under this chapter;
63.9 or

63.10 (3) limit the parties to a collective bargaining agreement from bargaining and agreeing
63.11 with respect to leave benefits and related procedures and employee protections that meet
63.12 or exceed, and do not otherwise conflict with, the minimum standards and requirements in
63.13 this chapter.

63.14 Sec. 36. **[268B.28] SEVERABLE.**

63.15 If the United States Department of Labor or a court of competent jurisdiction determines
63.16 that any provision of the family and medical benefit insurance program under this chapter
63.17 is not in conformity with, or is inconsistent with, the requirements of federal law, the
63.18 provision has no force or effect. If only a portion of the provision, or the application to any
63.19 person or circumstances, is determined not in conformity, or determined inconsistent, the
63.20 remainder of the provision and the application of the provision to other persons or
63.21 circumstances are not affected.

63.22 Sec. 37. **[268B.29] SMALL BUSINESS ASSISTANCE GRANTS.**

63.23 (a) Employers with 50 or fewer employees may apply to the department for grants under
63.24 this section.

63.25 (b) The commissioner may approve a grant of up to \$3,000 if the employer hires a
63.26 temporary worker to replace an employee on family or medical leave for a period of seven
63.27 days or more.

63.28 (c) For an employee's family or medical leave, the commissioner may approve a grant
63.29 of up to \$1,000 as reimbursement for significant additional wage-related costs due to the
63.30 employee's leave.

(d) To be eligible for consideration for a grant under this section, the employer must provide the department written documentation showing the temporary worker hired or significant wage-related costs incurred are due to an employee's use of leave under this chapter.

(e) The grants under this section may be funded from the family and medical benefit insurance account.

(f) For the purposes of this section, the commissioner shall average the number of employees reported by an employer over the last four completed calendar quarters to determine the size of the employer.

(g) An employer who has an approved private plan is not eligible to receive a grant under this section.

(h) The commissioner may award grants under this section only up to a maximum of \$5,000,000 per calendar year.

Sec. 38. **EFFECTIVE DATES.**

(a) Benefits under Minnesota Statutes, chapter 268B, shall not be applied for or paid until January 1, 2024, and thereafter.

(b) Sections 1, 2, 4, 5, and 6 are effective July 1, 2021.

(c) Section 15 is effective July 1, 2022.

(d) Sections 3, 17, 18, 22, 23, 24, and 26 are effective January 1, 2023.

(e) Sections 19, 21, 25, and 29 are effective January 1, 2023.

(f) Sections 7, 8, 9, 10, 11, 12, 13, 14, 16, 27, and 28 are effective January 1, 2024.

ARTICLE 2

FAMILY AND MEDICAL LEAVE BENEFIT AS EARNINGS

Section 1. Minnesota Statutes 2020, section 256J.561, is amended by adding a subdivision to read:

Subd. 4. Parents receiving family and medical leave benefits. A parent who meets the criteria under subdivision 2 and who receives benefits under chapter 268B is not required to participate in employment services.

Sec. 2. Minnesota Statutes 2020, section 256J.95, subdivision 3, is amended to read:

Subd. 3. **Eligibility for diversionary work program.** (a) Except for the categories of family units listed in clauses (1) to (8), all family units who apply for cash benefits and who meet MFIP eligibility as required in sections 256J.11 to 256J.15 are eligible and must participate in the diversionary work program. Family units or individuals that are not eligible for the diversionary work program include:

(1) child only cases;

(2) single-parent family units that include a child under 12 months of age. A parent is eligible for this exception once in a parent's lifetime;

(3) family units with a minor parent without a high school diploma or its equivalent;

(4) family units with an 18- or 19-year-old caregiver without a high school diploma or its equivalent who chooses to have an employment plan with an education option;

(5) family units with a caregiver who received DWP benefits within the 12 months prior to the month the family applied for DWP, except as provided in paragraph (c);

(6) family units with a caregiver who received MFIP within the 12 months prior to the month the family applied for DWP;

(7) family units with a caregiver who received 60 or more months of TANF assistance; ~~and~~

(8) family units with a caregiver who is disqualified from the work participation cash benefit program, DWP, or MFIP due to fraud; and

(9) single-parent family units where a parent is receiving family and medical leave benefits under chapter 268B.

(b) A two-parent family must participate in DWP unless both caregivers meet the criteria for an exception under paragraph (a), clauses (1) through (5), or the family unit includes a parent who meets the criteria in paragraph (a), clause (6), (7), or (8).

(c) Once DWP eligibility is determined, the four months run consecutively. If a participant leaves the program for any reason and reapplies during the four-month period, the county must redetermine eligibility for DWP.

Sec. 3. Minnesota Statutes 2020, section 256J.95, subdivision 11, is amended to read:

Subd. 11. **Universal participation required.** (a) All DWP caregivers, except caregivers who meet the criteria in paragraph (d), are required to participate in DWP employment

services. Except as specified in paragraphs (b) and (c), employment plans under DWP must, at a minimum, meet the requirements in section 256J.55, subdivision 1.

(b) A caregiver who is a member of a two-parent family that is required to participate in DWP who would otherwise be ineligible for DWP under subdivision 3 may be allowed to develop an employment plan under section 256J.521, subdivision 2, that may contain alternate activities and reduced hours.

(c) A participant who is a victim of family violence shall be allowed to develop an employment plan under section 256J.521, subdivision 3. A claim of family violence must be documented by the applicant or participant by providing a sworn statement which is supported by collateral documentation in section 256J.545, paragraph (b).

~~(d) One parent in a two-parent family unit that has a natural born child under 12 months of age is not required to have an employment plan until the child reaches 12 months of age unless the family unit has already used the exclusion under section 256J.561, subdivision 3, or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5). if that parent:~~

(1) receives family and medical leave benefits under chapter 268B; or

(2) has a natural born child under 12 months of age until the child reaches 12 months of age unless the family unit has already used the exclusion under section 256J.561, subdivision 3, or the previously allowed child under age one exemption under section 256J.56, paragraph (a), clause (5).

(e) The provision in paragraph (d) ends the first full month after the child reaches 12 months of age. This provision is allowable only once in a caregiver's lifetime. In a two-parent household, only one parent shall be allowed to use this category.

(f) The participant and job counselor must meet in the month after the month the child reaches 12 months of age to revise the participant's employment plan. The employment plan for a family unit that has a child under 12 months of age that has already used the exclusion in section 256J.561 must be tailored to recognize the caregiving needs of the parent.

Sec. 4. Minnesota Statutes 2020, section 256P.01, subdivision 3, is amended to read:

Subd. 3. **Earned income.** "Earned income" means cash or in-kind income earned through the receipt of wages, salary, commissions, bonuses, tips, gratuities, profit from employment activities, net profit from self-employment activities, payments made by an employer for regularly accrued vacation or sick leave, severance pay based on accrued leave time, benefits paid under chapter 268B, payments from training programs at a rate at or greater than the

67.1 state's minimum wage, royalties, honoraria, or other profit from activity that results from
67.2 the client's work, service, effort, or labor. The income must be in return for, or as a result
67.3 of, legal activity.

67.4 Sec. 5. **EFFECTIVE DATES.**

67.5 Sections 1 to 4 are effective July 1, 2024.

67.6 **ARTICLE 3**
67.7 **APPROPRIATIONS**

67.8 Section 1. **FAMILY AND MEDICAL BENEFITS; APPROPRIATIONS.**

67.9 (a) \$10,828,000 in fiscal year 2022 is appropriated from the general fund to the
67.10 commissioner of employment and economic development for the purposes of Minnesota
67.11 Statutes, chapter 268B. This is a onetime appropriation. In fiscal year 2023, \$23,250,000
67.12 is appropriated from the family and medical benefit insurance account to the commissioner
67.13 of employment and economic development for the purposes of Minnesota Statutes, chapter
67.14 268B. The base for this appropriation is \$51,041,000 in fiscal year 2024 and \$50,125,000
67.15 in fiscal year 2025. Starting in fiscal year 2026, the base for this appropriation is \$46,465,000.

67.16 (b) In fiscal year 2023, \$630,000 is appropriated from the general fund to the
67.17 commissioner of employment and economic development for the purpose of outreach,
67.18 education, and technical assistance for employees and employers regarding Minnesota
67.19 Statutes, chapter 268B. This appropriation is onetime. In fiscal year 2024, \$630,000 is
67.20 appropriated from the family and medical benefit insurance account to the commissioner
67.21 of employment and economic development for the purpose of outreach, education, and
67.22 technical assistance for employees and employers regarding Minnesota Statutes, chapter
67.23 268B. Of the amount appropriated, at least half must be used for grants to community-based
67.24 groups providing outreach, education, and technical assistance for employees, employers,
67.25 and self-employed individuals regarding Minnesota Statutes, chapter 268B. Outreach must
67.26 include efforts to notify self-employed individuals of their ability to elect coverage under
67.27 Minnesota Statutes, section 268B.11, and provide them with technical assistance in doing
67.28 so.

67.29 (c) \$528,000 in fiscal year 2022 is appropriated from the general fund to the commissioner
67.30 of labor and industry for the purposes of Minnesota Statutes, chapter 268B. This appropriation
67.31 is onetime. From the family and medical benefit insurance account, \$518,000 is appropriated
67.32 in fiscal year 2023, \$468,000 is appropriated in fiscal year 2024, and \$618,000 is appropriated

68.1 in fiscal year 2025 to the commissioner of labor and industry for the purposes of Minnesota
68.2 Statutes, chapter 268B.

68.3 (d) \$574,000 in fiscal year 2023 is appropriated from the family and medical benefit
68.4 insurance account to the commissioner of human services for information technology system
68.5 costs associated with Minnesota Statutes, chapter 268B. This appropriation is onetime.

68.6 (e) \$28,000 in fiscal year 2022 is appropriated from the general fund to the commissioner
68.7 of management and budget for information technology systems upgrades necessary to
68.8 comply with Minnesota Statutes, chapter 268B. This appropriation is onetime. From the
68.9 family and medical benefit insurance account, \$23,000 is appropriated in fiscal year 2023
68.10 for ongoing maintenance of these systems. The base for this appropriation is \$13,000.

68.11 (f) \$1,930,000 in fiscal year 2023 is appropriated from the general fund to the
68.12 commissioner of management and budget for the premiums and notice acknowledgment
68.13 required of employers under Minnesota Statutes, chapter 268B. The base for this
68.14 appropriation is \$3,727,000.

68.15 (g) \$11,000 in fiscal year 2022 is appropriated from the general fund to the legislative
68.16 coordinating commission for systems upgrades necessary to comply with Minnesota Statutes,
68.17 chapter 268B. This appropriation is onetime.

68.18 (h) \$20,000 in fiscal year 2022 is appropriated from the general fund to the supreme
68.19 court for judicial responsibilities associated with Minnesota Statutes, chapter 268B. This is
68.20 a onetime appropriation.

68.21 (i) \$5,600,000 in fiscal year 2025 is appropriated from the family and medical benefit
68.22 insurance account to the court of appeals for judicial responsibilities associated with
68.23 Minnesota Statutes, chapter 268B.

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

68.25 **Sec. 2. FAMILY AND MEDICAL BENEFITS; TRANSFER.**

68.26 In fiscal year 2023 only, \$11,416,000 shall be transferred from the family and medical
68.27 benefit insurance account to the general fund.

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