

**SENATE
STATE OF MINNESOTA
NINETY-THIRD SESSION**

S.F. No. 3874

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DATE	D-PG	OFFICIAL STATUS
02/19/2024	11638	Introduction and first reading
		Referred to Jobs and Economic Development
03/18/2024	12417	Author added Nelson

1.1 A bill for an act

1.2 relating to employment; modifying paid family and medical leave insurance;

1.3 modifying definitions; fixing the premium rates and amount of benefits; repealing

1.4 administrative authority to adjust the premium rates; amending the maximum

1.5 length of benefits; adding certain notice requirements; modifying reinstatement

1.6 requirements; authorizing certain small employers to voluntarily participate in the

1.7 paid family and medical leave insurance program; amending Minnesota Statutes

1.8 2023 Supplement, sections 181.942; 268B.01, subdivisions 15, 17, 18, 23, 35;

1.9 268B.04, subdivision 1, by adding subdivisions; 268B.07, subdivision 2; 268B.085;

1.10 268B.09, by adding a subdivision; 268B.11; 268B.14, subdivision 6; 268B.18;

1.11 Laws 2023, chapter 59, article 1, section 41; repealing Minnesota Statutes 2023

1.12 Supplement, sections 268B.04, subdivision 5; 268B.09, subdivisions 6, 7; 268B.14,

1.13 subdivision 7.

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

1.15 Section 1. Minnesota Statutes 2023 Supplement, section 181.942, is amended to read:

1.16 **181.942 REINSTATEMENT AFTER LEAVE.**

1.17 Subdivision 1. **Comparable position.** (a) An employee returning from a leave of absence

1.18 under ~~section~~ sections 181.939 ~~or~~ to 181.941 or chapter 268B is entitled to return to

1.19 employment in the employee's former position or in a position of comparable duties, number

1.20 of hours, and pay. An employee returning from a leave of absence longer than one month

1.21 must notify a supervisor at least two weeks prior to return from leave. An employee returning

1.22 from a leave under section 181.9412 or sections 181.9445 to 181.9448 is entitled to return

1.23 to employment in the employee's former position.

1.24 (b) If, during a leave under sections 181.939 to 181.944 or chapter 268B, the employer

1.25 experiences a layoff and the employee would have lost a position had the employee not

1.26 been on leave, pursuant to the good faith operation of a bona fide layoff and recall system,

1.27 including a system under a collective bargaining agreement, the employee is not entitled to

2.1 reinstatement in the former or comparable position. In such circumstances, the employee
2.2 retains all rights under the layoff and recall system, including a system under a collective
2.3 bargaining agreement, as if the employee had not taken the leave.

2.4 Subd. 2. **Pay; benefits; on return.** An employee returning from a leave of absence
2.5 under sections 181.939 to 181.944 or chapter 268B is entitled to return to employment at
2.6 the same rate of pay the employee had been receiving when the leave commenced, plus any
2.7 automatic adjustments in the employee's pay scale that occurred during leave period. The
2.8 employee returning from a leave is entitled to retain all accrued preleave benefits of
2.9 employment and seniority, as if there had been no interruption in service; provided that
2.10 nothing in sections 181.939 to 181.944 or chapter 268B prevents the accrual of benefits or
2.11 seniority during the leave pursuant to a collective bargaining or other agreement between
2.12 the employer and employees.

2.13 Subd. 3. **Part-time return.** An employee, by agreement with the employer, may return
2.14 to work part time during the leave period without forfeiting the right to return to employment
2.15 at the end of the leave period, as provided in sections 181.939 to 181.944 or chapter 268B.

2.16 Sec. 2. Minnesota Statutes 2023 Supplement, section 268B.01, subdivision 15, is amended
2.17 to read:

2.18 Subd. 15. **Covered employment.** (a) "Covered employment" means performing services
2.19 of whatever nature, unlimited by the relationship of master and servant as known to the
2.20 common law, or any other legal relationship performed for wages or under any contract
2.21 calling for the performance of services, written or oral, express or implied.

2.22 (b) For the purposes of this chapter, covered employment means an employee's entire
2.23 employment during a calendar year if:

2.24 (1) 50 percent or more of the employment during the calendar year is performed in
2.25 Minnesota;

2.26 (2) 50 percent or more of the employment during the calendar year is not performed in
2.27 Minnesota or any other state, or Canada, but some of the employment is performed in
2.28 Minnesota and the employee's residence is in Minnesota during 50 percent or more of the
2.29 calendar year; or

2.30 (3) 50 percent or more of the employment during the calendar year is not performed in
2.31 Minnesota or any other state, or Canada, but the place from where the employee's
2.32 employment is controlled and directed is based in Minnesota.

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

- 3.1 (1) a self-employed individual;
- 3.2 (2) an independent contractor; ~~or~~
- 3.3 (3) employment by a seasonal employee, as defined in subdivision 35~~;~~₂;
- 3.4 (4) employment with a small employer that has not elected to provide coverage under
- 3.5 section 268B.11, subdivision 1a; or
- 3.6 (5) employment with an employer that is closed in its entirety for 30 or more consecutive
- 3.7 days in any consecutive 52-week period.

3.8 Sec. 3. Minnesota Statutes 2023 Supplement, section 268B.01, subdivision 17, is amended

3.9 to read:

3.10 Subd. 17. **Employee.** (a) "Employee" means an individual who performs services of

3.11 whatever nature for an employer.

3.12 (b) Employee does not include employees of the United States of America, self-employed

3.13 individuals, or independent contractors.

3.14 (c) Employee does not include seasonal employees as defined in subdivision 35.

3.15 (d) Employee does not include:

3.16 (1) an employee of an employer excluded from covered employment under:

3.17 (i) subdivision 15, paragraph (c), clause (4), unless the employee individually elects

3.18 coverage under section 268B.11, subdivision 1; or

3.19 (ii) subdivision 15, paragraph (c), clause (5); or

3.20 (2) an employee who:

3.21 (i) primarily performs work outside of the state;

3.22 (ii) is employed in the state on a limited or temporary work schedule; and

3.23 (iii) is not expected to be employed in the state for 820 hours or more in a period of four

3.24 consecutive completed calendar quarters.

3.25 Sec. 4. Minnesota Statutes 2023 Supplement, section 268B.01, subdivision 18, is amended

3.26 to read:

3.27 Subd. 18. **Employer.** (a) Except as provided in paragraph (b), "employer" means:

3.28 (1) any person, type of organization, or entity, including any partnership, association,

3.29 trust, estate, joint stock company, insurance company, limited liability company, or

4.1 corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or
 4.2 the legal representative of a deceased person, having any individual in covered employment;

4.3 (2) the state, state agencies, Minnesota State Colleges and Universities, University of
 4.4 Minnesota, and other statewide public systems;

4.5 (3) any municipality or local government entity, including but not limited to a county,
 4.6 city, town, school district, Metropolitan Council, Metropolitan Airports Commission, housing
 4.7 and redevelopment authority, port authority, economic development authority, sports facilities
 4.8 authority, board or commission, joint powers board or organization created under section
 4.9 471.59, destination medical center corporation, municipal corporation, quasimunicipal
 4.10 corporation, or other political subdivision. An employer also includes charter schools; and

4.11 (4) the taxpaying employer as described in section 268.046, subdivision 1.

4.12 (b) Employer does not include:

4.13 (1) the United States of America; ~~or~~

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

4.16 (3) a small employer having fewer than 50 individuals in covered employment, unless
 4.17 the small employer voluntarily elects to provide family and medical leave coverage under
 4.18 section 268B.11, subdivision 1a; or

4.19 (4) an employer that is closed in its entirety for 30 or more consecutive days in any
 4.20 consecutive 52-week period.

4.21 Sec. 5. Minnesota Statutes 2023 Supplement, section 268B.01, subdivision 23, is amended
 4.22 to read:

4.23 Subd. 23. **Family member.** (a) "Family member" means, with respect to an applicant:

4.24 (1) a spouse or domestic partner;

4.25 (2) a child, including a biological, adopted, or foster child, a stepchild, or a child to
 4.26 whom the applicant stands in loco parentis, or is a legal guardian, ~~or is a de facto parent;~~

4.27 (3) a parent or ~~legal guardian~~ parent of a spouse or domestic partner of the applicant;

4.28 (4) a sibling;

4.29 (5) a grandchild; or

4.30 (6) a grandparent ~~or spouse's grandparent;~~

5.1 ~~(7) a son-in-law or daughter-in-law; and~~

5.2 ~~(8) an individual who has a relationship with the applicant that creates an expectation~~
 5.3 ~~and reliance that the applicant care for the individual, whether or not the applicant and the~~
 5.4 ~~individual reside together.~~

5.5 (b) For the purposes of this chapter, "grandchild" means a child of the applicant's child.

5.6 (c) For the purposes of this chapter, "grandparent" means a parent of the applicant's
 5.7 parent.

5.8 (d) For the purposes of this chapter, "parent" means the biological, adoptive, ~~de facto~~,
 5.9 or foster parent, stepparent, or legal guardian of an applicant or the applicant's spouse, or
 5.10 an individual who stood in loco parentis to an applicant when the applicant was a minor
 5.11 child.

5.12 Sec. 6. Minnesota Statutes 2023 Supplement, section 268B.01, subdivision 35, is amended
 5.13 to read:

5.14 Subd. 35. **Seasonal employee.** (a) A seasonal employee is an individual who is employed
 5.15 for no more than 150 days during any consecutive 52-week period ~~in hospitality by an~~
 5.16 ~~employer whose average receipts during any six months of the preceding calendar year~~
 5.17 ~~were not more than 33 percent of its average receipts for the other six months of such year.~~
 5.18 For an individual to be classified as a seasonal employee, an employer must apply to the
 5.19 department in a format and manner prescribed by the commissioner and certify that:

5.20 (1) the individual to be classified as a seasonal employee meets or will meet the 150-day
 5.21 maximum employment duration requirement; and

5.22 ~~(b) For the purposes of this section, "hospitality" has the meaning given under the~~
 5.23 ~~collective definitions in section 157.15, subdivisions 4 to 9 and 11 to 14.~~

5.24 ~~(c) For an individual to be classified as a seasonal employee, an employer must apply~~
 5.25 ~~to the department in a format and manner prescribed by the commissioner and certify that:~~

5.26 ~~(1) the employee meets or will meet the 150-day maximum employment duration under~~
 5.27 ~~this subdivision;~~

5.28 ~~(2) the employee's primary line of work is hospitality;~~

5.29 ~~(3) the employer meets the receipts threshold under this subdivision; and~~

5.30 ~~(4)~~ (2) the employer has provided the required employee notice required under section
 5.31 268B.26.

6.1 ~~(d)~~ (b) An employer must notify the department, in a format and manner prescribed by
6.2 the commissioner, within five business days if a previously classified seasonal employee
6.3 no longer meets the criteria above and is no longer a seasonal employee.

6.4 Sec. 7. Minnesota Statutes 2023 Supplement, section 268B.04, subdivision 1, is amended
6.5 to read:

6.6 Subdivision 1. **Application for benefits; determination of benefit account.** (a) An
6.7 application for benefits may be filed up to 60 days before leave taken under chapter 268B
6.8 in person, by mail, or by electronic transmission as the commissioner may require. The
6.9 applicant must include certification supporting a request for leave under this chapter. The
6.10 applicant must meet eligibility requirements and must provide all requested information in
6.11 the manner required. If the applicant fails to provide all requested information, the
6.12 communication is not an application for family and medical leave benefits.

6.13 (b) The commissioner must examine each application for benefits to determine the base
6.14 period and the benefit year, and based upon all the covered employment in the base period
6.15 the commissioner must determine the weekly benefit amount available, if any, and the
6.16 maximum amount of benefits available, if any. The determination, which is a document
6.17 separate and distinct from a document titled a determination of eligibility or determination
6.18 of ineligibility, must be titled determination of benefit account. A determination of benefit
6.19 account must be sent to the applicant and all base period employers, by mail or electronic
6.20 transmission, within five business days of the determination.

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

6.25 (d) The commissioner may, at any time within 12 months from the establishment of a
6.26 benefit account, reconsider any determination of benefit account and make an amended
6.27 determination if the commissioner finds that the wage credits listed in the determination
6.28 were incorrect for any reason. An amended determination of benefit account must be
6.29 promptly sent to the applicant and all base period employers, by mail or electronic
6.30 transmission, within five business days of the amended determination. This paragraph does
6.31 not apply to documents titled determinations of eligibility or determinations of ineligibility
6.32 issued.

6.33 (e) If an amended determination of benefit account reduces the weekly benefit amount
6.34 or maximum amount of benefits available, any benefits that have been paid greater than the

7.1 applicant was entitled is an overpayment of benefits. A determination or amended
7.2 determination issued under this section that results in an overpayment of benefits must set
7.3 out the amount of the overpayment and the requirement that the overpaid benefits must be
7.4 repaid according to section 268B.185.

7.5 Sec. 8. Minnesota Statutes 2023 Supplement, section 268B.04, is amended by adding a
7.6 subdivision to read:

7.7 Subd. 3a. **Weekly benefit amount adjustments.** Beginning January 1, 2027, and by
7.8 July 31 of each year thereafter, the commissioner must adjust the weekly benefit amount
7.9 so that the calculations under subdivision 3 result in a premium rate equal to the rates in
7.10 section 268B.14, subdivision 6.

7.11 Sec. 9. Minnesota Statutes 2023 Supplement, section 268B.04, is amended by adding a
7.12 subdivision to read:

7.13 Subd. 5a. **Maximum length of benefits.** (a) Except as provided in paragraph (b), the
7.14 maximum length of benefits an applicant may receive under this chapter in a single benefit
7.15 year shall not exceed 12 weeks total, for any one or a combination of the following:

7.16 (1) the applicant's serious health condition or pregnancy;

7.17 (2) bonding, safety leave, or family care; or

7.18 (3) leave related to one or more qualifying exigencies.

7.19 (b) In addition to the benefits received under paragraph (a), an applicant may receive
7.20 up to an additional two weeks of benefits for leave related to pregnancy complications. For
7.21 the purposes of this chapter, "pregnancy complications" means a serious health condition
7.22 resulting in incapacitation during pregnancy, as certified by a health care provider.

7.23 Sec. 10. Minnesota Statutes 2023 Supplement, section 268B.07, subdivision 2, is amended
7.24 to read:

7.25 Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility
7.26 raised by information required from an applicant and send to the applicant and any current
7.27 base period employer, by mail or electronic transmission, a document titled a determination
7.28 of eligibility or a determination of ineligibility, as is appropriate, within ~~two weeks~~ five
7.29 business days of the determination, unless the application is incomplete due to outstanding
7.30 requests for information including clerical or other errors. Nothing prohibits the commissioner
7.31 from requesting additional information or the applicant from supplementing their initial

8.1 application before a determination of eligibility. The commissioner may extend the deadline
8.2 for a determination under this subdivision due to extenuating circumstances.

8.3 (b) If an applicant obtained benefits through misrepresentation, the department is
8.4 authorized to issue a determination of ineligibility within 12 months of the establishment
8.5 of the benefit account.

8.6 (c) If the department has filed an intervention in a worker's compensation matter under
8.7 section 176.361, the department is authorized to issue a determination of ineligibility within
8.8 48 months of the establishment of the benefit account.

8.9 (d) A determination of eligibility or determination of ineligibility is final unless an appeal
8.10 is filed by the applicant or employer within 60 calendar days after sending. The determination
8.11 must contain a prominent statement indicating the consequences of not appealing.
8.12 Proceedings on the appeal are conducted in accordance with section 268B.08.

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

8.15 (f) The commissioner must provide an opportunity for the employer to submit relevant
8.16 information.

8.17 Sec. 11. Minnesota Statutes 2023 Supplement, section 268B.085, is amended to read:

8.18 **268B.085 NOTICE TO EMPLOYER; SCHEDULES.**

8.19 Subdivision 1. **Notice to employer.** (a)(1) If the need for leave is foreseeable, ~~an~~
8.20 ~~employee must provide~~ the employer may require an employee to provide at least 30 days'
8.21 advance written notice to the employer before use, extension, or modification of leave under
8.22 ~~this chapter is to~~ may begin. ~~If 30 days' notice is not practicable because of a lack of~~
8.23 ~~knowledge of approximately when leave will be required to begin, a change in circumstances,~~
8.24 ~~or a medical emergency, notice must be given as soon as practicable. Whether leave is to~~
8.25 ~~be continuous or is to be taken intermittently, notice need only be given one time, but the~~
8.26 ~~employee must advise the employer as soon as practicable if dates of scheduled leave change~~
8.27 ~~or are extended, or were initially unknown. In those cases where the employee is required~~
8.28 ~~to provide at least 30 days' notice of foreseeable leave and does not do so, the employee~~
8.29 ~~must explain the reasons why notice was not practicable upon request from the employer.~~
8.30 The employer may require the employee to include in the notice an explanation of the need
8.31 for the leave.

8.32 (2) Except as provided in clause (4), if the need for leave is not foreseeable, the employee
8.33 shall give verbal or written notice to the employer within 24 hours of the commencement

9.1 of leave and shall provide the written notice required under clause (1) within three days
 9.2 after the commencement of leave.

9.3 (3) Verbal notice may be provided by any person on behalf of the employee taking leave.
 9.4 Written notice may be provided by the employee, employee's emergency contact person,
 9.5 or any other person otherwise designated by the eligible employee, as reflected in the
 9.6 employer's records.

9.7 (4) An employee who takes safety leave shall give the employer reasonable advance
 9.8 notice of the intention to take safe leave, unless giving the advance notice is not feasible.

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

9.16 ~~(e) An employee shall provide at least oral, telephone, or text message notice sufficient~~
 9.17 ~~to make the employer aware that the employee needs leave allowed under this chapter and~~
 9.18 ~~the anticipated timing and duration of the leave.~~

9.19 ~~(d)~~ (c) In addition to any other prohibition imposed under this chapter, an employer must
 9.20 not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise
 9.21 retaliate or discriminate against an employee for providing this certification.

9.22 ~~(e)~~ (d) An employer may require an employee to comply with the employer's usual and
 9.23 customary notice and procedural requirements for requesting leave, including the employer's
 9.24 attendance or call-out policies and procedures, ~~absent unusual circumstances or other~~
 9.25 ~~circumstances caused by the reason for the employee's need for leave~~ consistent with the
 9.26 requirements of this subdivision. An employee may be required by an employer's or covered
 9.27 business entity's policy to contact a specific individual or designated phone number to report
 9.28 this information. Leave under this chapter must not be delayed or denied where an employer's
 9.29 usual and customary notice or procedural requirements require notice to be given sooner
 9.30 than set forth in this subdivision.

9.31 ~~(f)~~ (e) An employer may require that an employee taking leave under this chapter provide
 9.32 a copy of the certification under section 268B.06, subdivision 3. Upon written request from
 9.33 the employer, the employee shall provide a copy of the certification as soon as practicable
 9.34 and possible given all of the facts and circumstances in the individual case. Providing

10.1 certification at or around the time the employee provides a certification to the department
10.2 shall be considered practicable.

10.3 ~~(g)~~ (f) If an employer has failed to provide notice to the employee as required under
10.4 section 268B.26, paragraph (a), (b), or (e), the employee is not required to comply with the
10.5 notice requirements of this subdivision.

10.6 ~~(h)~~ (g) An employer may not require, as a condition of an employee taking leave under
10.7 this chapter, that the employee seek or find a replacement worker to cover the hours the
10.8 employee uses under this chapter.

10.9 (h) If an employee has failed to provide notice to the employer as required under
10.10 paragraph (a), the commissioner may reduce the first weekly benefit amount payable to the
10.11 employee under section 268B.04, subdivision 3, by 25 percent. An employer shall notify
10.12 the commissioner of the employee's failure to provide the notice required in this subdivision,
10.13 in the form and manner prescribed by the commissioner by rule.

10.14 Subd. 2. **Bonding leave.** Bonding leave taken under this chapter begins at a time requested
10.15 by the employee. Bonding leave must end within 12 months of the birth, adoption, or
10.16 placement of a foster child, except that, in the case where the child must remain in the
10.17 hospital longer than the mother, the leave must end within 12 months after the child leaves
10.18 the hospital. Employees may also use bonding leave before the actual placement or adoption
10.19 of a child in situations that include but are not limited to where the employee may be required
10.20 to:

10.21 (1) attend counseling sessions;

10.22 (2) appear in court;

10.23 (3) consult with the attorney or doctors representing the birth parent;

10.24 (4) submit to a physical examination; or

10.25 (5) travel to another country to complete an adoption.

10.26 Subd. 3. **Intermittent schedule.** (a) Except as provided in paragraphs (d) and (e), leave
10.27 under this chapter, based on a serious health condition, may be taken intermittently if such
10.28 leave is reasonable and appropriate to the needs of the individual with the serious health
10.29 condition. For all other leaves under this chapter, leave may be taken intermittently, subject
10.30 to the requirements of this subdivision. Intermittent leave is leave taken in separate blocks
10.31 of time due to a single, seven-day qualifying event.

11.1 (b) For an applicant who takes leave on an intermittent schedule, the weekly benefit
11.2 amount shall be prorated.

11.3 (c) Except as provided in paragraphs (d) and (e), an employee requesting leave taken
11.4 intermittently shall provide the employer with a schedule of needed workdays off as soon
11.5 as practicable and must make a reasonable effort to schedule the intermittent leave so as
11.6 not to disrupt unduly the operations of the employer. If this cannot be done to the satisfaction
11.7 of both employer and employee, the employer cannot require the employee to change their
11.8 leave schedule in order to accommodate the employer.

11.9 (d) A request to take bonding leave intermittently under this subdivision shall require
11.10 mutual agreement between the employee and employer before an intermittent bonding leave
11.11 schedule may commence.

11.12 (e) A request to take medical leave intermittently under this subdivision shall require
11.13 the employee to consult with the employer and make a reasonable effort to schedule the
11.14 intermittent leave so as not to disrupt unduly the operations of the employer. An employer
11.15 may initiate discussions with the employee to make arrangements for an intermittent medical
11.16 leave schedule that is mutually agreeable and satisfactory to both parties.

11.17 ~~(d)~~ (f) Notwithstanding the allowance for intermittent leave under this subdivision, an
11.18 employer shall not be required under this chapter to provide, but may elect to provide, more
11.19 than 480 hours of intermittent leave in any 12-month period. If an employer limits hours of
11.20 intermittent leave pursuant to this paragraph, an employee is entitled to take their remaining
11.21 leave continuously, subject to the total amount of leave available under section 268B.04,
11.22 subdivision 5. An employer may run intermittent leave available under the Family and
11.23 Medical Leave Act, United States Code, title 29, sections 2601 to 2654, as amended,
11.24 concurrent with an employee's entitlement to intermittent leave under this chapter.

11.25 Sec. 12. Minnesota Statutes 2023 Supplement, section 268B.09, is amended by adding a
11.26 subdivision to read:

11.27 Subd. 6a. **Reinstatement after leave.** (a) An employee who has been employed for 90
11.28 or more days prior to taking leave is entitled to reinstatement as provided under section
11.29 181.942 upon returning from leave.

11.30 (b) This subdivision does not apply to an employee of a small employer who has elected
11.31 to provide coverage under section 268B.11, subdivision 1a.

11.32 (c) This subdivision may be waived for employees who are working in the construction
11.33 industry under a bona fide collective bargaining agreement with a construction trade union

12.1 that maintains a referral-to-work procedure for employees to obtain employment with
 12.2 multiple signatory employers, but only if the waiver is set forth in clear and unambiguous
 12.3 terms in the collective bargaining agreement and explicitly cites this subdivision.

12.4 Sec. 13. Minnesota Statutes 2023 Supplement, section 268B.11, is amended to read:

12.5 **268B.11 ~~SELF-EMPLOYED AND INDEPENDENT CONTRACTOR~~ ELECTION**
 12.6 **OF COVERAGE.**

12.7 Subdivision 1. **Individual election of coverage.** (a) A self-employed individual ~~or~~₂
 12.8 independent contractor, or an individual employed by a small employer that has not made
 12.9 an election of coverage under subdivision 1a, may file with the commissioner by electronic
 12.10 transmission in a format prescribed by the commissioner an application to be entitled to
 12.11 benefits under this chapter for a period not less than 104 consecutive calendar weeks. Upon
 12.12 the approval of the commissioner, sent by United States mail or electronic transmission,
 12.13 the individual is entitled to benefits under this chapter beginning the calendar quarter after
 12.14 the date of approval or beginning in a later calendar quarter if requested by the self-employed
 12.15 individual or independent contractor. The individual ceases to be entitled to benefits as of
 12.16 the first day of January of any calendar year only if, at least 30 calendar days before the
 12.17 first day of January, the individual has filed with the commissioner by electronic transmission
 12.18 in a format prescribed by the commissioner a notice to that effect.

12.19 (b) The commissioner may terminate any application approved under this section with
 12.20 30 calendar days' notice sent by United States mail or electronic transmission if the
 12.21 ~~self-employed~~ individual is delinquent on any premiums due under this chapter. If an
 12.22 approved application is terminated in this manner during the first 104 consecutive calendar
 12.23 weeks of election, the ~~self-employed~~ individual remains obligated to pay the premium under
 12.24 subdivision 3 for the remainder of that 104-week period.

12.25 **Subd. 1a. Small employer election of coverage.** (a) A small employer having fewer
 12.26 than 50 individuals in covered employment may elect to participate in either or both paid
 12.27 family and medical leave programs under this chapter for a period not less than 104
 12.28 consecutive calendar weeks by filing a notice to that effect with the commissioner in a
 12.29 format prescribed by the commissioner. Upon receipt of the notice by the commissioner,
 12.30 an individual employed by such a small employer is entitled to apply for benefits beginning
 12.31 the calendar quarter after the date of receipt or beginning in a later calendar quarter if
 12.32 requested by the small employer.

12.33 (b) Election of coverage under this subdivision is voluntary and at the sole discretion of
 12.34 a small employer. A small employer may end its participation at any time by providing 30

13.1 days' written notice to the commissioner in a format prescribed by the commissioner. If a
13.2 small employer terminates an election to participate during the first 104 consecutive calendar
13.3 weeks following an election under paragraph (a), the small employer remains obligated to
13.4 pay the premium under section 268B.14, subdivision 6, for the remainder of that 104-week
13.5 period.

13.6 (c) A small employer who elects to participate in coverage under this subdivision and
13.7 the individuals employed by that small employer are subject to the provisions of this chapter,
13.8 including payment of premiums under section 268B.14, subdivision 6, unless otherwise
13.9 provided.

13.10 Subd. 2. **Application.** A self-employed individual who applies for coverage under this
13.11 section must provide the commissioner with (1) the amount of the individual's net earnings
13.12 from self-employment, if any, from the most recent taxable year and all tax documents
13.13 necessary to prove the accuracy of the amounts reported, and (2) any other documentation
13.14 the commissioner requires. A self-employed individual who is covered under this chapter
13.15 must annually provide the commissioner with the amount of the individual's net earnings
13.16 from self-employment within 30 days of filing a federal income tax return.

13.17 Subd. 3. **Premium.** ~~A self-employed~~ (a) An individual who elects to receive coverage
13.18 under this chapter must annually pay a premium as provided in section 268B.14, subdivision
13.19 6, clause (1), times the lesser of:

13.20 (1) the individual's self-employment premium base or taxable wages; or

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

13.23 (b) An individual whose small employer has not elected to provide coverage under
13.24 subdivision 1a, and who individually elects to receive coverage under subdivision 1, shall
13.25 remit their premium payment under paragraph (a) through a payroll deduction. The small
13.26 employer of such an individual shall remit the employee's premium payments to the
13.27 department in the manner directed by the commissioner.

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

14.1 Sec. 14. Minnesota Statutes 2023 Supplement, section 268B.14, subdivision 6, is amended
14.2 to read:

14.3 Subd. 6. **Annual employer premium rates.** (a) The employer premium rates beginning
14.4 January 1, 2026, shall be as follows:

14.5 (1) for an employer participating in both family and medical benefit programs, 0.7
14.6 percent;

14.7 (2) for an employer participating in only the medical benefit program and with an
14.8 approved private plan for the family benefit program, 0.4 percent; and

14.9 (3) for an employer participating in only the family benefit program and with an approved
14.10 private plan for the medical benefit program, 0.3 percent.

14.11 (b) Beginning January 1, 2027, and each year thereafter, the commissioner must apportion
14.12 the premium rate between the family and medical benefit programs based on the relative
14.13 proportion of expenditures for each program during the most recently completed four
14.14 calendar quarters. The commissioner shall publish the premium rate for the family and
14.15 medical benefit programs no later than October 15 of the year prior to when the rates take
14.16 effect.

14.17 Sec. 15. Minnesota Statutes 2023 Supplement, section 268B.18, is amended to read:

14.18 **268B.18 PUBLIC OUTREACH.**

14.19 Beginning in fiscal year 2026, the commissioner must use at least 0.5 percent of projected
14.20 benefit payments under section 268B.17 for the purpose of outreach, education, and technical
14.21 assistance for employees, employers, and ~~self-employed~~ individuals eligible to elect coverage
14.22 under section 268B.11. The department may enter into interagency agreements with the
14.23 Department of Labor and Industry and the Department of Commerce, including agreements
14.24 to transfer funds, subject to the limit in section 268B.17, to accomplish the requirements of
14.25 this section. At least one-half of the amount spent under this section must be used for grants
14.26 to community-based groups.

14.27 Sec. 16. Laws 2023, chapter 59, article 1, section 41, is amended to read:

14.28 **Sec. 41. ACTUARIAL STUDY.**

14.29 (a) The commissioner of employment and economic development must contract with a
14.30 qualified independent actuarial consultant to conduct an actuarial study of the family and
14.31 medical leave premium rate, premium rate structure, weekly benefit formula, duration of

15.1 benefits, fund reserve, and other components as necessary to determine an actuarially sound
15.2 rate and future rate-setting mechanism of the family and medical benefit insurance program
15.3 created in this act.

15.4 (b) A qualified independent actuarial consultant is one who is a Fellow of the Society
15.5 of Actuaries (FSA) and a Member of the American Academy of Actuaries (MAAA) and
15.6 who has experience directly relevant to the analysis required under this paragraph. The
15.7 commissioner must issue a request for proposal to satisfy the requirements of this section
15.8 no later than 30 days following enactment.

15.9 ~~(e) If the actuarial study indicates that the premium rate in Minnesota Statutes, section~~
15.10 ~~268B.14, subdivision 7, is not actuarially sound, the commissioner, in consultation with the~~
15.11 ~~commissioner of management and budget, must adjust the premium rate to make the program~~
15.12 ~~actuarially sound, subject to the limitations in Minnesota Statutes, section 268B.14,~~
15.13 ~~subdivision 7, paragraph (b).~~

15.14 ~~(d)~~ (c) A copy of the actuarial study must be provided to the majority and minority
15.15 leaders in the senate and the house of representatives no later than October 31, 2023. The
15.16 actuarial study must also be filed with the Legislative Reference Library in compliance with
15.17 Minnesota Statutes, section 3.195.

15.18 Sec. 17. **REPEALER.**

15.19 Minnesota Statutes 2023 Supplement, sections 268B.04, subdivision 5; 268B.09,
15.20 subdivisions 6 and 7; and 268B.14, subdivision 7, are repealed.

268B.04 BENEFIT ACCOUNT; BENEFITS.

Subd. 5. **Maximum length of benefits.** (a) The total number of weeks that an applicant may take benefits in a single benefit year for a serious health condition is the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the applicant received benefits for bonding, safety leave, family care, or qualifying exigency plus eight weeks.

(b) The total number of weeks that an applicant may take benefits in a single benefit year for bonding, safety leave, family care, or qualifying exigency is the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the applicant received benefits for a serious health condition plus eight weeks.

268B.09 EMPLOYMENT PROTECTIONS.

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

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

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

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

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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, excluding any bonus paid to another employee or employees for covering the work of the employee while the employee was on leave.

(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.

(g) Nothing in this section shall be deemed to affect the Americans with Disabilities Act, United States Code, title 42, chapter 126.

(h) Ninety calendar days from the date of hire, an employee has a right and is entitled to reinstatement as provided under this subdivision for any day for which:

(1) the employee has been deemed eligible for benefits under this chapter; or

(2) the employee meets the eligibility criteria under section 268B.06, subdivision 1, clause (2) or (3), and the employee has applied for benefits in good faith under this chapter. For the purposes of this paragraph, good faith is defined as anything that is not knowingly false or in reckless disregard of the truth.

(i) This subdivision and subdivision 7 may be waived for employees who are working in the construction industry under a bona fide collective bargaining agreement with a construction trade union that maintains a referral-to-work procedure for employees to obtain employment with multiple signatory employers, but only if the waiver is set forth in clear and unambiguous terms in the collective bargaining agreement and explicitly cites this subdivision and subdivision 7.

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 has 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 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.

268B.14 PREMIUMS.

Subd. 7. **Premium rate adjustments.** (a) Beginning January 1, 2027, and by July 31 of each year thereafter, the commissioner must adjust the annual premium rates using the formula in paragraph (b). In no year shall the annual premium rate exceed 1.2 percent of taxable wages paid to each employee.

(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 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.