

**Department of Employment and Economic Development**  
**Proposed Expedited Permanent Rules Regulating Paid Leave**

**3317.0010 SCOPE AND PURPOSE.**

Parts 3317.0010 to 3317.8000 govern the administration of the family and medical benefit insurance program under Minnesota Statutes, chapter 268B.

**3317.0015 DEFINITIONS.**

Subpart 1. **Applicability.** For the purposes of parts 3317.0010 to 3317.8000, the following terms have the meanings given.

Subp. 2. **Application.** "Application" means an application for paid leave benefits.

Subp. 3. **Department.** "Department" means the Department of Employment and Economic Development.

Subp. 4. **Commissioner.** "Commissioner" means the commissioner of employment and economic development or the commissioner's designated representative.

Subp. 5. **Covered individual.** "Covered individual" means an individual whose application for paid leave benefits has been approved.

Subp. 6. **Certifying party.** "Certifying party" means a qualified person who is eligible to sign documentation certifying safety leave pursuant to part 3317.8000.

Subp. 7. **Health care provider.** "Health care provider" has the meaning specified in Minnesota Statutes, section 268B.01, subdivision 24, and includes:

A. **licensed midwives; and**

B. **all health care providers provided under Code of Federal Regulations, title 29, section 825.125.**

Subp. 8. **Paid leave.** "Paid leave" means the program administered under Minnesota Statutes, chapter 268B.

**3317.2000 HEALTH CARE PROVIDER CERTIFICATION.**

Health care providers operating outside of Minnesota or the United States must complete a certification on a form provided by the commissioner on behalf of an applicant applying for paid leave benefits. Upon request, health care providers must provide any additional information that the commissioner deems necessary to determine eligibility for benefits.

**3317.3000 SEASONAL EMPLOYEES.**

Subpart 1. **Receipts.**

A. The commissioner must use monthly gross receipts to establish whether an employer meets the receipts threshold under Minnesota Statutes, section 268B.01, subdivision 35.

B. For the purposes of this subpart, "receipts" has the meaning given to "gross receipts" under Minnesota Statutes, section 297A.61, subdivision 8.

Subp. 2. **Primary line of work for seasonal employees.** For the purposes of Minnesota Statutes, section 268B.01, subdivision 35, an employee's primary line of work is considered to be hospitality if all or part of their employer's business meets one or more of the definitions under Minnesota Statutes, section 157.15, subdivisions 4 to 9 and 11 to 14.

Subp. 3. **Duration of employment for seasonal employees.** To be designated as a seasonal employee by an employer under Minnesota Statutes, section 268B.01, subdivision 35, an employee must not be employed by the same employer for more than 150 calendar days in a calendar year.

**3317.4000 ELECTION OF COVERAGE.**

Subpart 1. **Individual election of coverage.** Self-employed individuals and independent contractors, as specified in Minnesota Statutes, section 268B.01, must establish an online account through the department for paid leave program participation.

Subp. 2. **Employer election of coverage.** Employers operating in Minnesota that are not required to participate in the paid leave program must establish an online account through the department to opt into paid leave program participation.

**3317.4100 COVERED INDIVIDUALS' NOTIFICATION TO EMPLOYERS.**

Subpart 1. **Validation of covered individuals' notification to employers.** The commissioner must validate that a covered individual provided notice of their request for leave to the employer as required under Minnesota Statutes, section 268B.085, by requiring an attestation from the covered individual that includes:

A. a statement that the covered individual notified the employer pursuant to Minnesota Statutes, section 268B.085, subdivision 1;

B. the date the covered individual provided notice to the covered individual's employer; and

C. the method the covered individual used to communicate their notice to their employer.

The commissioner must send the attestation under this subpart to the employer from whom the covered individual would be taking leave.

Subp. 2. **Failure to notify employer.** An employer has seven calendar days from the date the commissioner sends the employer the covered individual's attestation to send the commissioner a written statement disputing a covered individual's claim that they provided notice of their request for leave to the employer as required under Minnesota Statutes, section 268B.085.

If the commissioner finds that a covered individual failed to notify their employer pursuant to the requirements of Minnesota Statutes, section 268B.085, the determination of the application is delayed until the commissioner finds that the covered individual provided the required notice to their employer.

### **3317.4150 EMPLOYER RESPONSE TO REQUESTS FOR INFORMATION.**

An employer must respond to the commissioner's request for information about an employee's application within seven calendar days of the request. If the commissioner does not receive a response from the employer, the commissioner must process the application without the information requested from the employer.

If the commissioner receives information from an employer after a determination of an applicant's eligibility, the commissioner must use the additional information to adjust the amount of leave and benefits determined if necessary.

### **3317.4200 DESIGNATION OF SUPPLEMENTAL BENEFITS.**

An employer may choose whether to designate payments to a covered individual as supplemental benefits, as defined under Minnesota Statutes, section 268B.01, subdivision 41, through the employer's internal policies and procedures. An employer must report any supplemental benefits for a covered individual to the commissioner.

### **3317.4300 REPORTING FRAUD.**

The commissioner must not consider an employer's report to the commissioner or law enforcement that a covered individual has committed fraud in connection with the covered individual's application or use of paid leave benefits, to be an action of retaliation or interference under Minnesota Statutes, section 268B.09. An employer's intentionally inaccurate report of fraud must be considered an action of retaliation or interference.

**3317.4310 SUSPENDING PAYMENTS.**

The commissioner must suspend paid leave benefit payments to a covered individual if the commissioner finds by a preponderance of the evidence that the covered individual intentionally gave the commissioner materially false information to obtain paid leave benefits. The commissioner must suspend the covered individual's payments for a period of time not to exceed three months beyond the time the commissioner determines that the condition has been corrected.

**3317.4400 OVERPAYMENTS.**

Subpart 1. Calculation of overpayment. When determining an overpayment, the commissioner must assess the dates during which a covered individual received more benefit payments from the paid leave program than the covered individual was eligible to receive.

Subp. 2. Notice of overpayment. The commissioner must notify a covered individual of an assessed overpayment in writing. A notice of overpayment must specify the reason for the overpayment, the time period during which the overpayment occurred, the amount of the overpayment, and the covered individual's right to appeal the commissioner's overpayment determination.

**3317.4500 OFFSET OF BENEFITS RECEIVED FROM OTHER STATES.**

If an applicant is eligible for paid leave benefits from a public program in a state other than Minnesota, for the same qualifying event that renders the applicant eligible for paid leave benefits from Minnesota's paid leave program, benefits paid by Minnesota must be offset by any benefits received from the other state.

**3317.4600 SCHEDULES AND MODIFICATIONS.**

Subpart 1. Schedule adherence. Covered individuals must adhere to the leave schedule approved by the commissioner.

A. A covered individual is not eligible for benefits for days not included in their approved leave schedule.

B. Days taken outside of an approved leave schedule are applied to the covered individual's maximum length of benefits for the benefit year.

C. A covered individual may, subject to Minnesota Statutes, section 268B.04, subdivision 8, request reimbursement for absences taken outside of an approved leave schedule if the covered individual applies for and is granted a leave schedule modification.

Subp. 2. **Reporting additional income.** If a covered individual receives additional income during a leave that they did not report in the initial application for benefits, the covered individual must notify the commissioner. The covered individual does not need to notify the commissioner of income designated as a supplementary benefit by the covered individual's employer.

Subp. 3. **Ending a leave early.** A covered individual who intends to end their leave before the approved leave period ends must provide advance notice of at least one business day to the commissioner and any employer from whom they are taking leave.

Subp. 4. **Extending an approved leave.**

A. If a covered individual seeks an extension of benefits after the approved leave period ends, the covered individual must request an extension with the commissioner pursuant to this subpart and inform any employer from whom they are taking leave.

B. The covered individual must make the request for an extension to the commissioner in writing no less than 14 calendar days prior to the expiration of the original approved leave period. If a covered individual requests an extension less than 14 calendar days prior to the expiration of the original approved leave period, the covered individual must show good cause for the delay. Good cause means timely notification was delayed due to circumstances outside of the control of the covered individual.

C. A request for an extension must include:

- (1) the reason for the extension;
- (2) the requested duration of the extended leave;
- (3) the date on which the covered individual provided notice to all employers;

and

(4) an updated certification supporting the request for extension from a health care provider or a certifying party, except in the case of bonding leave.

D. An employer may dispute a covered individual's claim that the covered individual provided notice pursuant to this subpart. The commissioner shall provide a process for impartial review of the dispute in which the commissioner must review all information provided by the covered individual and the employer. If the commissioner finds that the employer has not been properly notified, the commissioner shall require the applicant to provide the need for a leave and a proposed leave schedule with any employer before the commissioner makes a determination regarding an extension of benefits.

Subp. 5. **Changing intermittent leave schedules.**

A. If a covered individual seeks to change an approved intermittent leave schedule, the covered individual must request a change in schedule from the commissioner and notify any employer from whom they are taking leave.

B. The covered individual must make the request for a change to an intermittent leave schedule in writing no less than 14 calendar days prior to the expiration of the original approved leave. If a covered individual requests an extension less than 14 calendar days prior to the expiration of the original approved intermittent leave schedule, the covered individual must show good cause for the delay. Good cause means timely notification was delayed due to circumstances outside of the control of the covered individual.

C. A request for a change in schedule must include:

- (1) the reason for the change;
- (2) the requested changes to the schedule;
- (3) the date on which the covered individual provided notice to all employers;

and

(4) an updated certification supporting the change from a health care provider or a certifying party, except in the case of bonding leave.

D. An employer may contact the commissioner to dispute a covered individual's claim that the covered individual provided notice pursuant to this subpart. The commissioner shall provide a process for impartial review of the dispute in which the commissioner shall review all information provided by the covered individual and the employer. If the commissioner finds that the employer has not been properly notified, the commissioner shall require the applicant to share the need for a leave and a proposed leave schedule with any employer before the commissioner makes a determination regarding a change to the intermittent leave schedule.

Subp. 6. **Changing from intermittent to continuous leave.**

A. If a covered individual seeks to change from an approved intermittent leave schedule to a continuous leave schedule, the covered individual must request a change in schedule from the commissioner and notify any employer from whom they are taking leave.

B. The covered individual must make the request for a change in writing no less than 14 calendar days prior to the expiration of the original approved intermittent leave schedule. If a covered individual requests a change less than 14 calendar days prior to the expiration of the original approved intermittent leave schedule, the covered individual must show good cause for the delay. Good cause means timely notification was delayed due to circumstances outside of the control of the covered individual.



C. A request for a change in schedule must include:

- (1) the reason for the change;
- (2) the requested start and end date of the continuous leave;
- (3) the date on which the covered individual provided notice to all employers;

and

(4) an updated certification supporting the request for extension from a health care provider or a certifying party, except in the case of bonding leave.

D. An employer may contact the commissioner to dispute a covered individual's claim that the covered individual provided notice pursuant to this subpart. The commissioner shall provide a process for impartial review of the dispute in which the commissioner shall review all information provided by the covered individual and the employer. If the commissioner finds that the employer has not been properly notified, the commissioner must require the applicant to share the need for a leave and a proposed leave schedule with any employer before the commissioner makes a determination regarding a change from an approved intermittent leave schedule to a continuous leave schedule.

Subp. 7. **Changing from continuous to intermittent leave.**

A. If a covered individual seeks to change from an approved continuous leave schedule to an intermittent leave schedule, the covered individual must request a change in schedule from the commissioner and notify any employer from whom they are taking leave.

B. The covered individual must make the request for a change in writing no less than 14 calendar days prior to the expiration of the original approved leave. If a covered individual requests a change less than 14 calendar days prior to the expiration of the original approved leave, the covered individual must show good cause for the delay. Good cause means timely notification was delayed due to circumstances outside of the control of the covered individual.

C. A request for a change in schedule must include:

- (1) the reason for the change;
- (2) the requested start and end date of the continuous leave;
- (3) the date on which the covered individual provided notice to all employers;

and

(4) an updated certification supporting the request for extension from a health care provider or certifying party, except in the case of bonding leave.

D. An employer may contact the commissioner to dispute a covered individual's claim that the covered individual provided notice pursuant to this subpart. The commissioner shall provide a process for impartial review of the dispute in which the commissioner shall review all information provided by the covered individual and the employer. If the commissioner finds that the employer has not been properly notified, the commissioner shall require the applicant to share the need for a leave and a proposed leave schedule with any employer before the commissioner makes a determination regarding a change from an approved continuous leave schedule to an intermittent leave schedule.

**3317.4700 INTERMITTENT LEAVE.**

Subpart 1. Calculating benefits for intermittent leave. The commissioner shall calculate a total weekly benefit payment for intermittent leave using the process specified in Minnesota Statutes, section 268B.04, subdivision 3, except that the weekly benefit payment must be prorated as follows:

A. The commissioner shall calculate the hourly replacement by dividing the total weekly benefit by the number of hours worked in an applicant's typical workweek.

B. The commissioner shall calculate the benefit payment by taking the number of hours used during the intermittent leave multiplied by the hourly replacement.

Subp. 2. **Definition.** For the purposes of this part, "reasonable effort" means that an applicant must communicate the need for a leave and a proposed leave schedule with any employer before applying for paid leave benefits.

Subp. 3. **Disagreements between employees and employers on intermittent leave schedules.** If an employer believes that an applicant has failed to make a reasonable effort to share the need for a leave and a proposed leave schedule with any employer before applying for paid leave benefits, and the leave schedule is not identified as necessary by a health care provider's certification under Minnesota Statutes, section 268B.06, subdivision 3, paragraphs (a) to (c) and (f) to (g), an employer may file a dispute with the commissioner. The commissioner shall provide a process for impartial review of the dispute in which the commissioner shall review information provided by the applicant and the employer. If the commissioner finds that the employee has not made a reasonable effort, the commissioner shall require the applicant to provide the need for a leave and a proposed leave schedule with any employer before the commissioner makes a determination on an application for intermittent leave.

### **3317.4910 BENEFITS CALCULATION.**

The commissioner shall pay benefits as follows:

A. Continuous leave benefits must be paid weekly.

(1) For applications submitted and approved prior to the effective date of leave, the commissioner shall begin processing the first payment seven calendar days after the effective date of leave.

(2) For applications submitted or approved after the effective date of leave, the commissioner shall begin processing the first payment either seven calendar days after the effective date of leave or the next business day following approval of the application, whichever is later.

B. Intermittent leave is eligible for payment up to once weekly. To seek payment for an intermittent leave, an applicant must report the dates and times of absences related to the leave to the commissioner.

**3317.4920 BACKDATING OF APPLICATION.**

A. If an applicant is unable to apply in a timely manner due to incapacitation or due to no fault of their own, the department shall backdate the application to the effective date of leave.

B. The applicant must provide information and documentation to determine that good cause or incapacitation prevented the timely submission of the application. The documentation must show the factors that prevented the applicant from applying for benefits when the qualifying event occurred.

C. An applicant who seeks to backdate an application or weekly payment must file for benefits within seven days after the factors preventing a timely application no longer exist.

**3317.4930 PAYMENT OF BENEFITS AFTER DEATH.**

A. Payment of benefits must cease upon the death of a covered individual. Any accrued but unpaid benefits are payable to the estate of the covered individual.

B. Payment of benefits must cease upon the death of the person who the covered individual is taking leave to care for or with whom they are taking leave to bond.

C. The effective date of the cessation of payments under item A or B is the first full day during which the individual is no longer alive.

D. Upon request of the commissioner, a covered individual, the covered individual's estate, or the covered individual's representatives must provide the commissioner with a death certificate or other documentation establishing death.

**3317.5000 PRIVATE PLANS.**

Subpart 1. **Amendments to approved private plans.** A self-insured employer or private plan insurer whose private plan was approved by the commissioner in consultation with the commissioner of commerce must file all substantive amendments with the commissioner to document changes to the plan. A self-insured employer or private plan insurer must file any amendment to an approved private plan with the commissioner no less than 30 days before the amendment goes into effect.

Subp. 2. **Effective dates of voluntary termination of a private plan.** A self-insured employer must set the effective date for a voluntary private plan termination at the end of a calendar quarter.

Subp. 3. **Surety bond collection for involuntary termination of self-insured private plans.** The surety bond acquired by the self-insured employer under Minnesota Statutes, section 268B.10, subdivision 4, must name the Department of Employment and Economic Development as an obligee and must allow for recovery of costs and fees incurred by the department in pursuing a claim on the bond.

The commissioner shall collect the full value of the self-insured employer's surety bond when a self-insured private plan is involuntarily terminated. If a self-insured private plan is voluntarily terminated, but the self-insured private plan does not provide coverage through the effective date of the termination, as required by Minnesota Statutes, section 268B.10, subdivision 20, the commissioner shall collect the full value of the self-insured employer's surety bond.

Subp. 4. **Private plan reporting.** A self-insured employer or private plan insurer must submit an annual report to the commissioner that includes information required by this subpart and Minnesota Statutes, section 268B.25. Beginning in 2027, and annually thereafter, a self-insured employer or private plan insurer must submit the following information to the commissioner by November 1:

- A. total eligible claims;
- B. the number and percentage of claims attributable to each category of benefit;
- C. claimant demographics by age, race or ethnicity, gender, average weekly wage, occupation, and the type of leave taken;
- D. the percentage of claims denied and the reasons the claims were denied;
- E. average weekly benefit amount paid for all claims and by category of benefit;
- F. changes in the benefits paid compared to previous fiscal years;
- G. processing times for initial claims processing, initial determinations, and final decisions;
- H. average duration for cases completed; and
- I. the number of cases remaining open at the close of the year.

Subp. 5. **Coverage up to effective date of approved private plan.** An employer remains liable to the commissioner for premiums on wages paid until the effective date of the approved private plan. Employees remain eligible for benefits from the state-administered plan until the effective date of an approved private plan.

### **3317.5100 NOTICE OF COVERAGE UNDER PRIVATE PLAN.**

Subpart 1. **Notice.** All requirements of Minnesota Statutes, section 268B.26, apply to an employer with a private plan. In addition to the notice required by Minnesota Statutes, section 268B.26, an employer must provide notice to their employees about coverage under a private plan that includes:

A. an affirmation that the private plan confers all of the same rights, protections, and benefits provided to employees under the state-administered plan, including:

- (1) benefits under Minnesota Statutes, section 268B.04; and

(2) employment protections, rights, and remedies under Minnesota Statutes, section 268B.09;

B. the effective date of the approved private plan;

C. a description of the private plan's wage replacement benefits;

D. a description of the private plan's leave and employment protection benefits;

E. a description of the process to determine employee eligibility;

F. a description of the process to calculate and collect employee contributions;

G. the employee's appeal rights; and

H. the employee's optional alternatives to appeal a benefits determination to the private plan administrator, if such alternatives exist.

Subp. 2. **Timeline for notice of coverage under a private plan.** An employer must provide the notice described in subpart 1 not more than 30 days from the start date of the employee's employment, or 30 days before premium collection begins, whichever is later.

Subp. 3. **Notice of termination of a private plan.** An employer must provide notice to their employees about any termination of a private plan, including a revocation under Minnesota Statutes, section 268B.10, subdivision 16.

### **3317.5200 PRIVATE PLAN RECORDS RETENTION AND CONFIDENTIALITY.**

A self-insured employer or private plan insurer must maintain data related to an employee's paid leave benefits securely and, to the extent possible, separately from the employee's other employment records.

### **3317.5300 EMPLOYEE ACCESS TO PRIVATE PLAN CLAIM INFORMATION.**

A self-insured employer or private plan insurer must provide a covered individual, upon request and free of charge, access to, and copies of, all documents, records, and other

information relevant to the covered individual's claim for paid leave benefits. A private plan must provide data requested by the covered individual within ten business days of a request.

**3317.5400 INTERMITTENT LEAVES ADMINISTERED BY PRIVATE PLANS.**

A. A self-insured employer or private plan insurer must calculate an applicant's initial leave time balance by taking the number of hours in a typical workweek multiplied by the maximum leave benefits in Minnesota Statutes, section 268B.04, subdivision 5.

B. A self-insured employer or private plan insurer defining a benefit year as a fixed 12-month period measured forward from an employee's first day of leave taken must recalculate the length of benefits available to the covered individual on the anniversary of the effective date of a covered individual's first date of leave taken under this chapter.

**3317.6000 CERTIFICATION FOR CARING LEAVE.**

Subpart 1. Certification requirements. Certification for an applicant seeking leave to care for a family member with a serious health condition must include:

- A. the relationship of the applicant to the family member who needs care;
  - B. the proposed leave schedule for the applicant to care for the family member;
- and
- C. an attestation by the health care provider signing the certification that affirms:
    - (1) that the family member requires care from the applicant and that the health care provider is treating the family member; and
    - (2) the date on which the serious health condition commenced, the probable duration of the condition, and the facts within the knowledge of the health care provider establishing that the family member requires care.



Subp. 2. **Multiple applicants.** If more than one applicant seeks leave to provide care for the same family member with a serious health condition, the applicants' certification must be completed by the same health care provider.

**3317.6100 ATTESTATION OF RELATIONSHIP WITH FAMILY MEMBER REQUIRING CARING LEAVE.**

An applicant seeking leave to care for a family member with a serious health condition must attest that the person the applicant is taking leave to care for is the applicant's family member as defined in Minnesota Statutes, section 268B.01, subdivision 23. Providing false information is considered a misrepresentation under Minnesota Statutes, section 268B.185, or other relevant laws.

**3317.7000 SMALL EMPLOYER GRANTS.**

Subpart 1. **Application.** Applications for small employer assistance grants under Minnesota Statutes, section 268B.29, must be submitted electronically.

Subp. 2. **Definitions.** For the purposes of administering small employer assistance grants pursuant to Minnesota Statutes, section 268B.29, the following terms have the meanings given.

A. "Temporary worker" means an individual that an employer hires to substitute for a covered individual who is on leave for a period of seven days or more. The temporary worker assumes all or some of the covered individual's duties but will not fill the covered individual's role following the covered individual's return to work from leave.

B. "Wage-related costs" means costs associated with either or both of the following:

- (1) hiring, training, or paying a temporary worker; or
- (2) training or increasing the wages of an existing employee or employees to assume all or some of the duties of the covered individual on leave.

**3317.8000 SAFETY LEAVE.**

**Subpart 1. Certification process for safety leave.** A qualified person who is eligible to sign documentation certifying safety leave includes:

A. an individual who is licensed, certified, or otherwise authorized under law to practice as a mental health professional or a mental health practitioner as defined in Minnesota Statutes, section 245I.04, and operating within the scope of their practice;

B. a licensed health care professional operating within the scope of their license;

C. a domestic abuse advocate or sexual assault counselor as defined by Minnesota Statutes, section 595.02, acting in their professional capacity;

D. a victim's advocate who is employed by, under contract with, or appointed by the court, acting in their professional capacity;

E. a judge, referee appointed pursuant to the Minnesota Rules of Civil Procedure, court administrator, prosecutor, or probation officer, acting in their professional capacity;

F. a Title IX coordinator, as defined by Code of Federal Regulations, chapter 34, section 106.8, acting in their professional capacity;

G. a peace officer, part-time peace officer, or reserve officer as defined by Minnesota Statutes, section 626.84, acting in their professional capacity; or

H. any other person acting in their professional capacity who can submit documentation to the commissioner that includes the necessary information required by Minnesota Statutes, section 268B.06.

**Subp. 2. Certifying parties.** The commissioner must offer a process for verifying the identity and credentials of certifying parties.

**Subp. 3. Documentation of a qualified person or their organization.** The qualified person providing a certification for an applicant seeking safety leave must maintain

documentation verifying their credentials or organizational affiliation and provide such documentation to the commissioner upon request.