CHAPTER 268B

FAMILY AND MEDICAL BENEFITS

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268B.001 CITATION.

This chapter may be cited as the "Minnesota Paid Leave Law."

History: *2024 c 127 art 73 s 1*

268B.01 DEFINITIONS.

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

Subd. 2. **Active duty.** "Active duty" has the meaning given in United States Code, title 29, section 2611(14), and includes domestic deployment.

Subd. 3. **Applicant.** "Applicant" means an individual or the individual's authorized representative applying for leave with benefits under this chapter.

Subd. 4. **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. 4a. **Authorized representative.** "Authorized representative" means an individual designated by the person or the individual's legal representative to act on their behalf. This individual may be a family member, guardian, or other individual designated by the person or the individual's legal representative, if any, to assist in purchasing and arranging for supports. For the purposes of this chapter, an authorized representative must be at least 18 years of age.

Subd. 5. **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:

If the application for family or medical leave benefits is effective on or between these dates:	The base period is the prior:
February 1 to March 31	January 1 to December 31
May 1 to June 30	April 1 to March 31
August 1 to September 30	July 1 to June 30
November 1 to December 31	October 1 to September 30

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

If the application for family or medical leave benefits is effective on or between these dates:	The base period is the prior:
January 1 to January 31	October 1 to September 30
April 1 to April 30	January 1 to December 31
July 1 to July 31	April 1 to March 31
October 1 to October 31	July 1 to June 30

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

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

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

(2) if an applicant was compensated for a loss of work of 14 to 26 weeks during a base period referred to in paragraph (a) or (b), then the base period is the first four of the most recent seven completed calendar quarters before the effective date of the application for family or medical leave benefits;

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

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

(e) For an applicant under a private plan as provided in section 268B.10, the base period is those most recent four quarters in which wage credits were earned. If an employer does not have four quarters of wage detail information, the employer must accept an employee's certification of wage credits, based on the employee's records. If the employee does not provide certification of additional wage credits, the employer may use a base period that consists of all available quarters.

(f) The base period is calculated once during the benefit year.

Subd. 6. **Benefit.** "Benefit" or "benefits" means monetary payments under this chapter associated with qualifying bonding, family care, medical care related to pregnancy, serious health condition, qualifying exigency, or safety leave events, unless otherwise indicated by context.

Subd. 7. **Benefit account.** "Benefit account" means a benefit account established under section 268B.04.

Subd. 8. **Benefit year.** (a) Except as provided in paragraphs (b) to (d), "benefit year" means the period of 52 calendar weeks beginning the effective date of leave under section 268B.04 is effective. For an effective date of leave that is any January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 calendar weeks.

(b) For an individual with multiple employers participating in the state plan, "benefit year" means the period of 52 calendar weeks beginning the date an effective date of leave under section 268B.04 is effective for any of the multiple employers.

(c) For a private plan under section 268B.10, "benefit year" means:

(1) a calendar year;

(2) any fixed 12-month period, such as a fiscal year or a 12-month period measured forward from an employee's first date of employment;

(3) a 12-month period measured forward from an employee's first day of leave taken; or

(4) a rolling 12-month period measured backward from an employee's first day of leave taken.

Employers are required to notify employees of their benefit year within 30 days of the private plan approval and first day of employment.

(d) For individuals with multiple employers with at least one employer participating in the state plan and at least one employer participating in a private plan:

(1) for the employer or employers participating in the state plan, "benefit year" means the period of 52 calendar weeks beginning the effective date of leave is effective for any employer; and

(2) the employer or employers participating in a private plan may define their benefit year according to paragraph (c).

Subd. 9. **Bonding.** "Bonding" means time spent by an applicant who is a biological, adoptive, or foster parent with a biological, adopted, or foster child in conjunction with the child's birth, adoption, or placement.

Subd. 10. **Calendar day.** "Calendar day" or "day" means a fixed 24-hour period corresponding to a single calendar date.

Subd. 11. **Calendar quarter.** "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

Subd. 12. **Calendar week.** "Calendar week" has the same meaning as "week" under subdivision 49.

Subd. 13. **Commissioner.** "Commissioner" means the commissioner of employment and economic development, unless otherwise indicated by context.

Subd. 14. **Construction industry.** "Construction industry" means any construction, reconstruction, building erection, alteration, remodel, repair, renovation, rehabilitation, excavation, or demolition of any building, structure, facility utility, power plant, sewer, dam, highway, road, street, airport, bridge, or other improvement.

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

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

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

(2) 50 percent or more of the employment during the calendar year is not performed in Minnesota or any other single state within the United States, or United States territory or foreign nation, but some of the employment is performed in Minnesota and the employee's residence is in Minnesota during 50 percent or more of the calendar year.

(c) "Covered employment" does not include:

(1) a self-employed individual;

(2) an independent contractor; or

(3) employment by a seasonal employee, as defined in subdivision 35.

(d) Entities that are excluded under this section may opt in to coverage following a procedure determined by the commissioner. In such cases, services provided by employees are considered covered employment under subdivision 15.

(e) The commissioner may adopt rules in accordance with chapter 14 to:

(1) further define the application of this subdivision; and

(2) establish the criteria for covered employment for individuals that do not meet the criteria in paragraphs (a) and (b), but that perform services as an employee to a Minnesota employer.

Subd. 15a. **Covered individual.** "Covered individual" means either:

(1) an applicant who meets the financial eligibility requirements of section 268B.04, subdivision 2, if services provided are covered employment under subdivision 15; or

(2) a self-employed individual or independent contractor who has elected coverage under section 268B.11 and who meets the financial eligibility requirements under section 268B.11.

Subd. 15b. **Effective date of application.** "Effective date of application" means the date on which an application is submitted to the department.

Subd. 15c. **Effective date of leave.** "Effective date of leave" means the date of first absence associated with a leave under section 268B.09.

Subd. 16. **Department.** "Department" means the Department of Employment and Economic Development, unless otherwise indicated by context.

Subd. 17. **Employee.** (a) "Employee" means an individual who performs services of whatever nature for an employer.

(b) Employee does not include employees of the United States of America, self-employed individuals, or independent contractors.

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

Subd. 18. **Employer.** (a) "Employer" means:

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

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

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

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

(b) Employer does not include:

(1) the United States of America; or

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

Subd. 19. **Estimated self-employment income.** "Estimated self-employment income" means a self-employed individual's net earnings from self-employment in the most recent taxable year.

Subd. 20. **Family and medical benefit insurance account.** "Family and medical benefit insurance account" means the family and medical benefit insurance account in the special revenue fund in the state treasury under section 268B.02.

Subd. 21. **Family benefit program.** "Family benefit program" means the program administered under this chapter for the collection of premiums and payment of benefits related to family care, bonding, safety leave, and leave related to a qualifying exigency.

Subd. 22. **Family care.** "Family care" means an applicant caring for a family member with a serious health condition or caring for a family member who is a military member.

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

(1) a spouse or domestic partner;

(2) a child, including a biological child, adopted child, foster child, stepchild, child of a domestic partner, or child to whom the applicant stands in loco parentis, is a legal guardian, or is a de facto custodian;

(3) a parent or legal guardian of the applicant;

(4) a sibling;

(5) a grandchild;

(6) a grandparent or spouse's grandparent;

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

(8) an individual who has a personal relationship with the applicant that creates an expectation and reliance that the applicant care for the individual without compensation, whether or not the applicant and the individual reside together.

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

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

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

Subd. 23a. **Financially eligible.** "Financially eligible" means an applicant meets the requirements established under section 268B.04, subdivision 2.

Subd. 24. **Health care provider.** "Health care provider" means:

(1) an individual who is licensed, certified, or otherwise authorized under law to practice in the individual's scope of practice as a physician; physician assistant; podiatrist; osteopath; surgeon; advanced practice registered nurse; an alcohol and drug counselor as defined in section 148F.01, subdivision 5; or a mental health professional as defined in section 245I.02, subdivision 27; or

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

Subd. 25. **High quarter.** "High quarter" means the calendar quarter in an applicant's base period with the highest amount of wage credits.

Subd. 26. **Incapacity.** "Incapacity" means inability to perform regular work, attend school, or perform regular daily activities due to a serious health condition, treatment therefore, or recovery therefrom.

Subd. 27. **Independent contractor.** If there is an existing specific test or definition for independent contractor in Minnesota statute or rule applicable to an occupation or sector as of May 25, 2023, that test or definition shall apply to that occupation or sector for purposes of this chapter. If there is not an existing test or definition as described, the definition for independent contractor shall be as provided in Minnesota Rules, part 5200.0221.

Subd. 27a. **Initial paid week.** "Initial paid week" means the first seven days of a leave, which must be paid and is a payable period for leave types including family care, medical care related to pregnancy, serious health condition, qualifying exigency, or safety leave. For intermittent leave, initial paid week means seven consecutive or nonconsecutive, or a combination of consecutive and nonconsecutive, calendar days from the effective date of leave, of which only days when leave is taken are payable. The initial week must be paid retroactively after the applicant has met the seven-day qualifying event under section 268B.06, subdivision 2. A retroactive payment must be included in the first benefit payment to the applicant.

Subd. 28. **Inpatient care.** "Inpatient care" means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity, or any subsequent treatment in connection with such inpatient care.

Subd. 29. **Maximum weekly benefit amount.** "Maximum weekly benefit amount" means the state's average weekly wage as calculated under section 268.035, subdivision 23.

Subd. 30. **Medical benefit program.** "Medical benefit program" means the program administered under this chapter for the collection of premiums and payment of benefits related to an applicant's serious health condition or medical care related to pregnancy.

Subd. 31. **Medical care related to pregnancy.** "Medical care related to pregnancy" includes prenatal care or incapacity due to pregnancy or recovery from childbirth, stillbirth, miscarriage, or related health conditions.

Subd. 32. **Net earnings from self-employment.** "Net earnings from self-employment" has the meaning given in section 1402 of the Internal Revenue Code, as defined in section 290.01, subdivision 31.

Subd. 33. **Qualifying exigency.** (a) "Qualifying exigency" means a need arising out of a military member's active duty service or notice of an impending call or order to active duty in the United States armed forces, including providing for the care or other needs of the family member's child or other dependent, making financial or legal arrangements for the family member, attending counseling, attending military events or ceremonies, spending time with the family member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.

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

Subd. 34. **Safety leave.** "Safety leave" means leave from work because of domestic abuse, sexual assault, or stalking of the applicant or applicant's family member, provided the leave is to:

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

(2) obtain services from a victim services organization;

(3) obtain psychological or other counseling;

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

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

Subd. 35. **Seasonal employee.** (a) A seasonal employee is an individual who is employed for no more than 150 days during any consecutive 52-week period in hospitality by an employer whose average receipts during any six months of the preceding calendar year were not more than 33 percent of its average receipts for the other six months of such year.

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

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

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

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

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

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

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

Subd. 36. **Self-employed individual.** "Self-employed individual" means a resident of the state who, in one taxable year preceding the current calendar year, derived at least 5.3 percent of the state's average annual wage in net earnings from self-employment.

Subd. 37. **Self-employment premium base.** "Self-employment premium base" means the lesser of:

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

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

Subd. 38. **Self-employment wages.** "Self-employment wages" means the amount of wages that a self-employed individual earned in the calendar year from an entity from which the individual also received net earnings from self-employment.

Subd. 39. **Serious health condition.** (a) "Serious health condition" means a physical or mental illness, injury, impairment, condition, or substance use disorder that involves:

(1) inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(2) continuing treatment or supervision by a health care provider which includes any one or more of the following:

(i) a period of incapacity of seven or more days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(A) treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances beyond the individual's control prevent a follow-up visit from occurring as planned, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider; or

(B) treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider;

(ii) a period of incapacity due to medical care related to pregnancy;

(iii) a period of incapacity or treatment for a chronic health condition that:

(A) requires periodic visits, defined as at least twice a year, for treatment by a health care provider or under orders of, or on referral by, a health care provider;

(B) continues over an extended period of time, including recurring episodes of a single underlying condition; and

(C) may cause episodic rather than continuing periods of incapacity;

(iv) a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The applicant or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or

(v) a period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:

(A) restorative surgery after an accident or other injury; or

(B) a condition that would likely result in a period of incapacity of more than seven full calendar days in the absence of medical intervention or treatment.

(b) For the purposes of paragraph (a), clauses (1) and (2), treatment by a health care provider means an in-person visit or telemedicine visit with a health care provider, or by a provider of health care services under orders of, or on referral by, a health care provider.

(c) For the purposes of paragraph (a), treatment includes but is not limited to examinations to determine if a serious health condition exists and evaluations of the condition.

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

Subd. 40. **State's average weekly wage.** "State's average weekly wage" means the weekly wage calculated under section 268.035, subdivision 23.

Subd. 41. **Supplemental benefit payment.** (a) "Supplemental benefit payment" means:

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

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

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

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

(d) At no time shall a supplemental benefit payment combined with any leave benefit received under this chapter exceed the regular wage or salary of the applicant.

Subd. 42. **Taxable year.** "Taxable year" has the meaning given in section 290.01, subdivision 9.

Subd. 43. **Taxable wages.** "Taxable wages" means those wages paid to an employee in covered employment each calendar year up to an amount equal to the maximum wages subject to premium in a calendar year, which is equal to the maximum earnings in that year subject to the FICA Old-Age, Survivors, and Disability Insurance tax rounded to the nearest $1,000.

Subd. 44. **Typical workweek.** "Typical workweek" means the average number of hours worked per week by an employee within the last two quarters prior to the effective date of application.

Subd. 45. **Wage credits.** "Wage credits" means the amount of wages paid within an applicant's base period for covered employment, as defined in subdivision 15.

Subd. 46. **Wage detail report.** "Wage detail report" means the report on each employee and all seasonal employees in covered employment required from an employer on a calendar quarter basis under section 268B.12.

Subd. 47. **Wages.** "Wages" has the meaning given in section 268.035, subdivision 29.

Subd. 48. **Wages paid.** (a) "Wages paid" means the amount of wages:

(1) that have been actually paid; or

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

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

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

Subd. 49. **Week.** "Week" means calendar week ending at midnight Saturday.

Subd. 50. **Weekly benefit amount.** "Weekly benefit amount" means the amount of family and medical leave benefits computed under section 268B.04.

History: *2023 c 59 art 1 s 9; 2024 c 127 art 73 s 2-13*

268B.02 FAMILY AND MEDICAL BENEFIT INSURANCE PROGRAM CREATION.

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

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

Subd. 3. **Rulemaking.** The commissioner shall adopt rules to implement the provisions of this chapter. For the purposes of this chapter, the commissioner may use the expedited rulemaking process under section 14.389.

Subd. 4. **Account creation; appropriation.** The family and medical benefit insurance account is created in the special revenue fund in the state treasury. Unless otherwise appropriated, 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. Appropriations and transfers to the account are credited to the account. Earnings, such as interest, dividends, and any other earnings arising from assets of the account, are credited to the account. Money remaining in the account at the end of a fiscal year is not canceled to the general fund but remains in the account until expended.

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

Subd. 6. **Procurement.** For purposes of administering this chapter, until July 1, 2026, the department is exempt from the requirements of sections 16A.15, subdivision 3; 16C.06; 16C.08 to 16C.09; and any other applicable state procurement laws and procedures.

History: *2023 c 59 art 1 s 10*

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 due to misrepresentation, including any penalties or interest;

(4) the applicant has not been held ineligible for benefits under section 268B.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.

History: *2023 c 59 art 1 s 11*

268B.04 FINANCIAL ELIGIBILITY; BENEFITS.

Subdivision 1. **Application for benefits; determination of financial eligibility.** (a) An application for benefits may be filed up to 60 days before leave taken under chapter 268B in person, by mail, or by electronic transmission as the commissioner may require. The applicant must include certification supporting a request for leave under this chapter. The applicant must meet eligibility requirements and must provide all requested information in the manner required. If the applicant fails to provide all requested information within a time period to be specified by the commissioner, the application is considered closed and the division must not further act on it.

(b) The commissioner must examine each application for benefits to determine the base period and the benefit year, and based upon all the covered employment in the base period the commissioner must determine the financial eligibility of the applicant, which includes the weekly benefit amount available, if any, and the maximum amount of benefits available, if any. The department must notify all employers from which the applicant is taking leave, either in writing or electronically, not more than five business days after a claim for benefits has been filed by an employee or former employee as provided under this section.

(c) If a base period employer did not provide wage detail information for the applicant as required under section 268B.12, the commissioner may accept an applicant certification of wage credits, based upon the applicant's records, and determine the financial eligibility of the applicant.

(d) The commissioner may, at any time within 12 months from the establishment of a leave, reconsider any determination of benefit account and make an amended determination if the commissioner finds that the wage credits listed in the determination were incorrect for any reason. An amended determination of benefit account must be promptly sent to the applicant and any impacted base period employers, by mail or electronic transmission. This paragraph does not apply to determinations of eligibility or determinations of ineligibility issued.

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

Subd. 2. **Benefit account requirements.** To establish a benefit account, an applicant must have wage credits of at least 5.3 percent of the state's average annual wage rounded down to the next lower $100.

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

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

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

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

(b) For applicants that have changed employers within the base period, the weekly benefit amount is calculated based on the highest quarter of wages in the base period.

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

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

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

(f) For a covered individual receiving family or medical leave, a weekly benefit amount is prorated when:

(1) the covered individual works hours for wages;

(2) the covered individual uses paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental benefit payment as defined in section 268B.01, subdivision 41; or

(3) leave is taken intermittently.

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

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, and 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, and 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.

Subd. 6. **Minimum period for which benefits payable.** Except for a claim for benefits for bonding leave, any claim for benefits must be based on a single qualifying event of at least seven calendar days.

Subd. 6a. **Minimum increment of leave.** Intermittent leave must be taken in increments consistent with the established policy of the employer to account for use of other forms of leave, so long as such employer's policy permits a minimum increment of at most one calendar day of intermittent leave. An applicant is not permitted to apply for payment for benefits associated with intermittent leave until the applicant has eight hours of accumulated leave time, unless more than 30 calendar days have lapsed since the initial taking of the leave.

Subd. 7. [Never effective, 2024 c 127 art 73 s 14]

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

(b) If the applicant was unable to apply in a timely manner due to incapacitation or due to no fault of their own, the commissioner may backdate the claim beyond one calendar week to the effective date of leave. The commissioner may require the employee to prove the circumstances that prevented timely filing.

History: *2023 c 59 art 1 s 12; 2024 c 127 art 73 s 14*

268B.05 NOTIFICATION OF CHANGED CIRCUMSTANCES.

An applicant shall promptly notify the department of changes that may affect eligibility under section 268B.06.

History: *2023 c 59 art 1 s 13*

268B.06 ELIGIBILITY REQUIREMENTS; PAYMENTS THAT AFFECT BENEFITS.

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

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

(2) the applicant was unable to perform regular work due to a serious health condition, a qualifying exigency, safety leave, family care, bonding, or medical care related to pregnancy. For bonding leave, eligibility ends 12 months after birth or placement;

(3) the applicant has sufficient wage credits from an employer or employers as defined in section 268B.01, subdivision 45, to establish a benefit account under section 268B.04; and

(4) an applicant requesting benefits under this chapter must fulfill certification requirements under subdivision 3.

(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 (3) or (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 medical care related to pregnancy, family care, a qualifying exigency, safety leave, or the applicant's serious health condition. The days must be consecutive, unless the leave is intermittent. The seven-day qualifying event under this paragraph is a retroactively payable period, not an unpaid waiting period.

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

(c) The commissioner shall 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. **Certification.** (a) Certification for an applicant taking leave related to the applicant's serious health condition shall be sufficient if the certification states the date on which the serious health condition began, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider as required by the commissioner. If the applicant requests intermittent leave, the certification must include the health care provider's reasonable estimate of the frequency and duration and estimated treatment schedule, if applicable.

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

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

(d) Certification for an applicant taking bonding leave because of the birth of the applicant's child shall be sufficient if the certification includes either the child's birth certificate or a document issued by the health care provider of the child or the health care provider of the person who gave birth, stating the child's birth date or estimated due date.

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

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

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

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

(3) other documentation permitted by the commissioner.

(g) Certification for an applicant taking safety leave is sufficient if the certification includes a court record or documentation signed by a qualified person acting in the qualified person's professional capacity to declare a need for safety leave. The commissioner must not require disclosure of details relating to an applicant's or applicant's family member's domestic abuse, sexual assault, or stalking. The commissioner may adopt rules regarding safety leave.

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

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

Subd. 4. **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 leave;

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

(3) for which the applicant worked for pay;

(4) for which the applicant is incarcerated; or

(5) for which the applicant is receiving or has received unemployment insurance benefits.

Subd. 5. **Vacation, sick leave, and paid time off.** (a) An employee may use vacation pay, sick pay, or paid time off pay in lieu of family or medical leave program benefits under this chapter, provided the employee is concurrently eligible and subject to the total amount of leave available under section 268B.04, subdivision 5. Subject to the limitations of section 268B.09, subdivisions 6 and 7, an employee is entitled to the employment protections under section 268B.09 for those workdays during which this option is exercised. This subdivision applies to private plans under section 268B.10.

(b) An employer may offer supplemental benefit payments, as defined in section 268B.01, subdivision 41, to an employee taking leave under this chapter. The choice to receive supplemental benefits lies with the employee. Nothing in this section shall be construed as requiring an employee to receive or an employer to provide supplemental benefits payments. The total amount of paid benefits under this chapter and the supplemental benefits paid must not exceed the employee's usual salary.

(c) An employer may provide an employee with wage replacement during an absence. If the total amount of paid benefits under this chapter and the supplemental benefits paid exceed the employee's usual salary, the employee must refund the excess to either the employer or the paid leave division.

(d) If an employer provides wage replacement to an employee for weeks that should be paid by the division, the department may reimburse the employer directly for those weeks.

Subd. 6. **Workers' compensation offset.** (a) An applicant is not eligible to receive benefits for any portion of a week in which the applicant is receiving or has received compensation for loss of wages equal to or in excess of the applicant's weekly family or medical leave benefit amount under:

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

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

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

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

Subd. 7. [Never effective, 2024 c 127 art 73 s 51]

Subd. 7a. **Disability insurance offset.** An employee may receive disability insurance payments in addition to family and medical leave benefits provided the employee is concurrently eligible for both benefits. Disability insurance benefits may be offset by family and medical leave benefits paid to the employee pursuant to the terms of a disability insurance policy.

Subd. 8. **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 able to perform the essential functions of their employment with or without a reasonable accommodation.

(b) If an applicant meets the requirements of paragraph (a), clause (1) or (2), there is no deduction from the applicant's weekly benefit amount for any Social Security disability benefits.

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

Subd. 9. **Seasonal employment denial.** (a) An applicant is not eligible to receive benefits or take protected leave under the provisions of this chapter for any week the applicant is a seasonal employee as defined in section 268B.01, subdivision 35.

(b) If benefits are denied to any applicant under paragraph (a) who remains employed more than 150 days, the applicant is only entitled to benefits beginning the Sunday following the completion of the 150-day period.

History: *2023 c 59 art 1 s 14; 2024 c 127 art 73 s 15-19*

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 the employer or employers of the applicant from which the applicant is taking leave, 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;

(3) the week the benefits commence;

(4) the weekly benefit amount payable; and

(5) the maximum duration of benefits.

(c) The commissioner may adopt rules regarding additional information that may be requested from an applicant and notifications provided to an employer as part of the application and eligibility determination process for benefits.

Subd. 2. **Determination.** (a) The commissioner must determine any issue of ineligibility raised by information required from an applicant and send to the applicant and any current base period employer from which the applicant applied to take leave, by mail or electronic transmission, a determination of eligibility or a determination of ineligibility, as is appropriate, within two weeks, unless the application is incomplete due to outstanding requests for information including clerical or other errors. Nothing prohibits the commissioner from requesting additional information or the applicant from supplementing their initial application before a determination of eligibility. The commissioner may extend the deadline for a determination under this subdivision due to extenuating circumstances.

(b) The commissioner shall set requirements for an applicant to respond to a request for information. If the required information is not provided in the timeline provided in paragraph (a), the application is denied.

(c) The commissioner shall prescribe requirements for when an incomplete application is closed. Applicants shall have the ability to reopen closed claims in a manner and form prescribed by the commissioner.

(d) If an applicant obtained benefits through misrepresentation, the department is authorized to issue a determination of ineligibility within 12 months of the effective date of leave.

(e) If the department has filed an intervention in a workers' compensation matter under section 176.361, the department is authorized to issue a determination of ineligibility within 48 months of the effective date of leave.

(f) The determination must contain a prominent statement indicating the consequences of not appealing.

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

Subd. 3. **Amended determination.** Unless an appeal has been filed, the commissioner, on the commissioner's own motion, may reconsider a determination of eligibility or determination of ineligibility that has not become final and issue an amended determination. Any amended determination must be sent to the applicant and any employer in the current base period from which the applicant applied for leave by mail or electronic transmission.

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

Subd. 5. **Overpayment.** A determination or amended determination that holds an applicant ineligible for benefits for periods an applicant has been paid benefits is an overpayment of those family or medical leave benefits. A determination or amended determination issued under this section that results in an overpayment of benefits must set out the amount of the overpayment and the requirement that the overpaid benefits must be repaid according to section 268B.185.

History: *2023 c 59 art 1 s 15; 2024 c 127 art 73 s 20-22*

268B.08 [Never effective, 2024 c 127 art 73 s 51]

268B.081 APPEALS.

Subdivision 1. **Appeal filing.** (a) The commissioner may allow an appeal to be filed by electronic transmission. The commissioner may restrict the manner and format under which an appeal by electronic transmission may be filed. The notification of the determination or decision that is subject to appeal must

clearly state the manner in which the determination or decision may be appealed. Subject to paragraph (b), this paragraph applies to requests for reconsideration under subdivision 6.

(b) Except as provided in paragraph (c), the commissioner must allow an applicant to file an appeal by mail even if an appeal by electronic transmission is allowed. To be considered an appeal, a written statement delivered or mailed to the department must identify:

(1) the determination or decision that the applicant disagrees with; and

(2) the reason the applicant disagrees with the determination or decision.

(c) If an agent files an appeal on behalf of an employer, the commissioner may require the appeal to be filed online. If the commissioner requires the appeal to be filed online, the appeal must be filed through the electronic address provided on the determination being appealed and use of another method of filing does not constitute an appeal. This paragraph does not apply to:

(1) an employee filing an appeal on behalf of an employer; or

(2) an attorney licensed to practice law who is directly representing the employer on appeal.

(d) All information requested by the department when the appeal is filed must be supplied or the communication does not constitute an appeal.

(e) If no appeal is filed by the deadlines listed in subdivision 2, the determination or decision is conclusive and final, unless the appealing party can demonstrate good cause for failing to file in a timely manner. For purposes of this paragraph, "good cause" is a reason that would have prevented a reasonable person acting with due diligence from filing in a timely manner. Unless otherwise specified, deadlines in this section may be extended up to 60 days for good cause.

Subd. 2. **Appealable issues and deadlines.** (a) An applicant may appeal to the department:

(1) within 30 calendar days after a financial eligibility determination or amended financial eligibility determination sent by mail or electronic transmission by the department under section 268B.04 regarding:

(i) whether services performed constitute employment;

(ii) whether the employment is covered employment;

(iii) whether money paid constitutes wages; or

(iv) a denial resulting from the applicant's missing or incomplete documentation;

(2) within 30 calendar days after an eligibility determination sent by the department related to seasonal employment status under section 268B.06, subdivision 9;

(3) within 30 calendar days after an eligibility determination sent by the department under section 268B.07 regarding:

(i) financial eligibility, calculations of benefit amount, work schedule, and leave balance available; or

(ii) a denial resulting from missing or incomplete documentation;

(4) within 30 calendar days after the denial of a good cause demonstration under subdivision 1, paragraph (e). The deadline for appeals of denials of good cause demonstration may not be extended;

(5) within 30 calendar days after an applicant receives a decision from an insurer, approved private plan administrator, or employer under section 268B.10, subdivision 6, regarding the results of the administrative review under section 268B.10, subdivision 6, paragraph (b); and

(6) within 30 calendar days after a determination of overpayment penalty sent by the department under section 268B.185.

(b) A base period employer may appeal to the department:

(1) within 30 calendar days after a denial of an application for seasonal worker status under section 268B.01, subdivision 35;

(2) within 30 calendar days after a financial eligibility determination or amended financial eligibility determination sent by mail or electronic transmission by the department under section 268B.04 regarding:

(i) whether services performed constitute employment;

(ii) whether the employment is covered employment; or

(iii) whether money paid constitutes wages;

(3) within 30 calendar days after a denial of an application for substitution of a private plan is sent under section 268B.10;

(4) within 30 calendar days after a notice of termination of a private plan is sent by the department under section 268B.10, subdivision 16;

(5) within 30 calendar days after a notice of penalties is sent by the department under section 268B.10, subdivision 17;

(6) within 30 calendar days after the notice of the determination of the calculation of premiums has been sent by the department under section 268B.14, subdivision 1;

(7) within 30 calendar days after a determination of denial is sent by the department under section 268B.15, subdivision 7; and

(8) within 30 calendar days after a determination of penalty is sent by the department under section 268B.19.

(c) Notwithstanding any provision of this chapter, the commissioner or a hearing officer may, before a determination is made under this chapter, refer any issue of ineligibility, or any other issue under this chapter, directly for hearing in accordance with this section. The status of the issue is the same as if a determination had been made and an appeal filed.

(d) The computation of time provisions of sections 645.15 and 645.151 apply to this section.

Subd. 3. **Notice of hearing.** The notice of hearing must include materials that provide:

(1) a statement that the purpose of the hearing is to take sworn testimony and other evidence on the issues involved, that the hearing is the only procedure available under the law at which a party may present evidence, and that further appeals consist of a review of the evidence submitted at the hearing;

(2) a statement of the parties' right to represent themselves or to be represented by an attorney or other authorized representative;

(3) a brief description of the procedure to be followed to request a continuance of the hearing;

(4) a brief description of the procedure to be followed at the hearing, including the role of the hearing officer;

(5) a statement that the parties should arrange in advance for the participation of witnesses the parties need to support their position;

(6) a statement that a party may find out the name of the other party's attorney or other authorized representative, names of the witnesses that the other party intends to have testify at the hearing, and an explanation of the process for making the request;

(7) a statement that subpoenas may be available to compel the participation of witnesses or the production of documents and an explanation of the process for requesting a subpoena;

(8) a statement that documents contained in the department's records and documents submitted by the parties that will be introduced at the hearing as possible exhibits will be sent to the parties in advance of the hearing;

(9) a statement that even if the applicant already received benefits, the applicant should participate in the hearing, because if the applicant is held ineligible, the applicant is not eligible to receive further benefits and will have to pay back the benefits already received;

(10) a statement that the hearing officer will determine the facts based upon a preponderance of the evidence along with the statutory definition of "preponderance of the evidence"; and

(11) a statement that a party who fails to participate in the hearing will not be allowed a rehearing unless the party can show good cause for failing to participate, along with the statutory definition of "good cause."

Subd. 4. **Hearing.** (a) Upon a timely appeal to a determination having been filed or upon a referral for direct hearing, the department must set a time and date for a de novo due process hearing and send notice to an applicant and an employer, by mail or electronic transmission, not less than ten calendar days before the date of the hearing.

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

(c) The department has discretion regarding the method by which the hearing is conducted.

(d) The department may conduct a joint hearing with the unemployment insurance division if the substance of the appeal pertains to both programs.

(e) The department must assign a hearing officer to conduct a hearing and may transfer to another hearing officer any proceedings pending before another hearing officer.

(f) The department has discretion regarding the method by which the hearing is conducted. The hearing must be conducted by a hearing officer as an evidence-gathering inquiry, without regard to a burden of proof. The order of presentation of evidence is determined by the hearing officer.

(g) Each party may present and examine witnesses and offer their own documents or other exhibits. Parties have the right to examine witnesses, object to exhibits and testimony, and cross-examine the other party's witnesses. The hearing officer must assist all parties in the presentation of evidence. The hearing officer must rule upon evidentiary objections on the record. The hearing officer must permit rebuttal testimony.

Parties have the right to make closing statements. Closing statements may include comments based upon the evidence and arguments of law. The hearing officer may limit repetitious testimony and arguments.

(h) The hearing officer must exercise control over the hearing procedure in a manner that protects the parties' rights to a fair hearing, including the sequestration of witnesses to avoid prejudice or collusion. The hearing officer must ensure that all relevant facts are clearly and fully developed. The hearing officer may obtain testimony and other evidence from department employees and any other person the hearing officer believes will assist in reaching a proper result.

(i) Before taking testimony, the hearing officer must inform the parties:

(1) that the purpose of the hearing is to take testimony and other evidence on the issues;

(2) that the hearing is the only opportunity available to the parties to present testimony and other evidence on the issues involved;

(3) of an explanation of how the hearing will be conducted, including the role and obligations of the hearing officer;

(4) that the parties have the right to request that the hearing be continued so that additional witnesses and documents can be presented, by subpoena if necessary;

(5) that the facts will be determined upon a preponderance of the evidence, along with the statutory definition of "preponderance of the evidence";

(6) of the statutory provision on burden of proof;

(7) that certain government agencies may have access to the information provided at the hearing if allowed by statute and that the information provided may be disclosed under a district court order; and

(8) that after the hearing is over, the hearing officer will issue a written decision, which will be sent to the parties by mail or electronic transmission.

Subd. 5. **Decision.** (a) After the conclusion of the hearing, upon the evidence obtained, the hearing officer must serve by mail or electronic transmission to all parties the decision, reasons for the decision, and written findings of fact. The hearing officer's decision is final unless a request for reconsideration is filed under subdivision 6.

(b) If the appellant fails to participate in the hearing, the hearing officer has the discretion to dismiss the appeal by summary decision. By failing to participate, the appellant is considered to have failed to exhaust available administrative remedies unless the appellant files a request for reconsideration under subdivision 6 and establishes good cause for failing to participate in the hearing. Submission of a written statement does not constitute participation. The appellant must participate personally or through an authorized representative.

(c) The hearing officer must issue a decision dismissing the appeal as untimely if the judge decides the appeal was not filed in accordance with the deadlines under subdivision 2 after sending the determination. The hearing officer may dismiss the appeal by summary decision or may conduct a hearing to obtain evidence on the timeliness of the appeal.

(d) Decisions of a hearing officer are not precedential.

Subd. 6. **Request for reconsideration.** (a) Any party, or the commissioner, may, within 30 calendar days after service of the hearing officer's decision, file a request for reconsideration asking the hearing officer

to reconsider that decision. Upon the filing of a request for reconsideration, the division must send a notice by mail or electronic transmission to the appellant that a request for reconsideration has been filed. The notice must inform the appellant:

(1) that reconsideration is the procedure for the hearing officer to correct any factual or legal mistake in the decision or to order an additional hearing when appropriate;

(2) of the opportunity to provide comment on the request for reconsideration and the right to obtain a copy of any recorded testimony and exhibits offered or received into evidence at the hearing;

(3) that providing specific comments as to a perceived factual or legal mistake in the decision, or a perceived mistake in procedure during the hearing, will assist the hearing officer in deciding the request for reconsideration;

(4) of the right to obtain any comments and submissions provided by any other party regarding the request for reconsideration; and

(5) of the provisions of paragraph (c) regarding additional evidence.

This paragraph does not apply if paragraph (d) is applicable. Sending the notice does not mean the hearing officer has decided the request for reconsideration was timely filed.

(b) In deciding a request for reconsideration, the hearing officer must not consider evidence that was not submitted at the hearing, except for purposes of determining whether to order an additional hearing. The hearing officer must order an additional hearing if a party shows that evidence which was not submitted at the hearing:

(1) would likely change the outcome of the decision and there was good cause for not having previously submitted that evidence; or

(2) would show that the evidence that was submitted at the hearing was likely false and that the likely false evidence had an effect on the outcome of the decision.

For purposes of this paragraph, "good cause" is a reason that would have prevented a reasonable person acting with due diligence from submitting the evidence.

(c) If the appellant failed to participate in the hearing, the hearing officer must issue an order setting aside the decision and ordering an additional hearing if the party who failed to participate had good cause for failing to do so. The appellant who failed to participate in the hearing must be informed of the requirement to show good cause for failing to participate. If the hearing officer determines that good cause for failure to participate has not been shown, the judge must state that determination in the decision issued under paragraph (f). Submission of a written statement at the hearing does not constitute participation for purposes of this paragraph. "Good cause" for purposes of this paragraph is a reason that would have prevented a reasonable person acting with due diligence from participating in the hearing.

(d) A request for reconsideration must be decided by the hearing officer who issued the decision under subdivision 5 unless that hearing officer:

(1) is no longer employed by the department as a hearing officer;

(2) is on an extended or indefinite leave; or

(3) has been removed from the proceedings by the department.

(e) If a request for reconsideration is timely filed, the hearing officer must issue:

(1) a decision affirming the findings of fact, reasons for the decision, and a decision issued under subdivision 5;

(2) a decision modifying the findings of fact, reasons for the decision, and a decision issued under subdivision 5; or

(3) an order setting aside the findings of fact, reasons for the decision, and a decision issued under subdivision 5 and ordering an additional hearing.

(f) The hearing officer must issue a decision dismissing the request for reconsideration as untimely if the judge decides the request for reconsideration was not filed within 30 calendar days after sending the decision under subdivision 5.

(g) The hearing officer must send to all parties by mail or electronic transmission the decision or order issued under this subdivision. A decision affirming or modifying the previously issued findings of fact, reasons for the decision, and a decision issued under subdivision 5, or a decision dismissing the request for reconsideration as untimely, is the final decision on the matter and is binding on the parties unless judicial review is sought under subdivision 9.

Subd. 7. **Withdrawal of an appeal.** (a) An appeal that is pending before a hearing officer may be withdrawn by the appealing party, or an authorized representative of that party, by filing a notice of withdrawal. A notice of withdrawal may be filed by mail or by electronic transmission.

(b) The appeal must, by order, be dismissed if a notice of withdrawal is filed, unless a hearing officer directs that further proceedings are required. An order of dismissal issued because of a notice of withdrawal is not subject to reconsideration or appeal.

(c) A party may file a new appeal after the order of dismissal, but the original deadline period for appeal begins from the date of issuance of the determination, and that period is not suspended or restarted by the notice of withdrawal and order of dismissal. The new appeal may only be filed by mail or facsimile transmission.

(d) For purposes of this subdivision, "appeals" includes a request for reconsideration filed under subdivision 6.

Subd. 8. **Effect of decisions.** (a) If a hearing officer's decision allows benefits to an applicant, the benefits must be paid regardless of any request for reconsideration or petition to the Minnesota Court of Appeals.

(b) If a hearing officer's decision modifies or reverses a determination that allowed benefits to be paid, or on reconsideration the decision modifies or reverses a prior decision that allowed benefits to be paid, any benefits paid are an overpayment of those benefits. A decision that results in an overpayment of benefits must set out the amount of the overpayment and the requirement under section 268B.185, subdivision 1, that the benefits must be repaid.

(c) If a hearing officer, on reconsideration under subdivision 6, orders the taking of additional evidence, the hearing officer's prior decision must continue to be enforced until new findings of fact and decision are made by the hearing officer.

Subd. 9. **Use of evidence; data privacy.** (a) All testimony at a hearing must be recorded. A copy of recorded testimony and exhibits offered or received into evidence at the hearing must, upon request, be furnished to a party at no cost:

(1) during the time period for filing a request for reconsideration;

(2) while a request for reconsideration is pending;

(3) during the time for filing a petition under subdivision 12; or

(4) while a petition is pending.

Regardless of any law to the contrary, recorded testimony and other evidence may later be made available only under a district court order. A subpoena is not considered a district court order.

(b) Testimony obtained at a hearing must not be used or considered for any purpose, including impeachment, in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights agency with enforcement powers, unless the proceeding is initiated by the department. This paragraph does not apply to criminal proceedings.

Subd. 10. **No collateral estoppel.** No findings of fact, decision, or order issued by a hearing officer may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, be it contractual, administrative, or judicial, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

Subd. 11. **Representation; fees.** (a) In any proceeding under subdivision 4 or 6, an applicant or employer may be self-represented or represented by an attorney or an authorized representative. Except for services provided by a licensed attorney, no person may charge an applicant a fee of any kind for advising, assisting, or representing an applicant in a hearing, on reconsideration, or in a proceeding under subdivision 12.

(b) A hearing officer may refuse to allow a person to represent others in a hearing if that person acts in an unethical manner or repeatedly fails to follow the instructions of the hearing officer.

(c) An applicant may not be charged fees, costs, or disbursements of any kind in a proceeding before a hearing officer, the Minnesota Court of Appeals, or the Supreme Court of Minnesota.

(d) No attorney fees may be awarded, or costs or disbursements assessed, against the department as a result of any proceedings under this section.

Subd. 12. **Appeal to court of appeals.** (a) Any final determination on a request for reconsideration may be appealed by any party directly to the Minnesota Court of Appeals. The Minnesota Court of Appeals must, by writ of certiorari to the department, review the hearing officer's decision on reconsideration, provided a petition for the writ is filed with the court and a copy is served upon the hearing officer or the commissioner and any other party within 30 calendar days of the sending of the hearing officer's decision on reconsideration under subdivision 6. Three days are added to the 30-calendar-day period if the decision on reconsideration was mailed to the parties.

(b) Any employer petitioning for a writ of certiorari must pay to the court the required filing fee in accordance with the Rules of Civil Appellate Procedure. If the employer requests a written transcript of the testimony received at the hearing conducted under this section, the employer must pay to the department the cost of preparing the transcript. That money is credited to the administration account.

(c) Upon issuance by the Minnesota Court of Appeals of a writ of certiorari as a result of an applicant's petition, the department must furnish to the applicant at no cost a written transcript of any testimony received at the hearing conducted under this section and, if requested, a copy of all exhibits entered into evidence. No filing fee or cost bond is required of an applicant petitioning the Minnesota Court of Appeals for a writ of certiorari.

(d) The Minnesota Court of Appeals may affirm the decision of the hearing officer or remand the case for further proceedings, or it may reverse or modify the decision if the substantial rights of the petitioner may have been prejudiced because the findings, inferences, conclusion, or decision are:

(1) in violation of constitutional provisions;

(2) in excess of the statutory authority or jurisdiction of the department;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) unsupported by substantial evidence in view of the hearing record as submitted; or

(6) arbitrary or capricious.

(e) The department is the primary responding party to any judicial action involving a hearing officer's decision. The department may be represented by an attorney licensed to practice law in Minnesota.

Subd. 13. **Rescheduling and continuances.** (a) Requests to reschedule a hearing must be addressed in a manner and form prescribed by the commissioner in advance of the regularly scheduled hearing date. A hearing must be rescheduled based on a party's good cause need for additional time to obtain necessary evidence or to obtain representation or adequately prepare, inability to participate due to illness, or other compelling reasons beyond the control of the party that prevent participation at the originally scheduled time. A hearing may be rescheduled only once by each party except in the case of an emergency. If requested, a written statement by mail or electronic transmission confirming the reasons for requesting that the case be rescheduled must be provided to the department.

(b) The ten-calendar-day notice requirement for hearings does not apply to rescheduled hearings.

(c) If a request for rescheduling is made because of the unavailability of a witness or the need to obtain documents, the hearing officer may direct that the hearing take place as scheduled. After obtaining the testimony and other evidence then available, the hearing officer must determine whether the hearing should be continued to obtain the testimony of the unavailable witness or the unavailable documents. The ten-calendar-day notice requirement for hearings does not apply to continued hearings. The hearing officer has the discretion to continue a hearing if the hearing officer determines that additional evidence is necessary for a proper result.

Subd. 14. **Consolidation of parties, issues, and new issues.** Upon the request of a party or on the hearing officer's motion, the hearing officer may consolidate for hearing issues involving one or more of the same parties. The hearing officer may take testimony and render a decision on issues not listed on the notice of hearing if each party is notified on the record, is advised of the right to object, and does not object. If a party objects, the hearing officer must:

(1) continue the hearing to allow the party to prepare for consideration of the issue; or

(2) direct the department to address the issue and send to the parties a determination by mail or electronic transmission.

Subd. 15. **Interpreters.** (a) The department must provide an interpreter, when necessary, upon the request of a party. The requesting party must notify the department at least five calendar days before the date of the hearing that an interpreter is required. The hearing officer must continue any hearing where a witness or party needs an interpreter to be understood or to understand the proceedings.

(b) A written statement in the five most common languages spoken in Minnesota must accompany all notices and written materials sent to the parties stating that the accompanying documents are important and that if the reader does not understand the documents the reader should seek immediate assistance.

Subd. 16. **Exhibits in hearings.** (a) Upon receipt of the notice of hearing, and no later than five calendar days before the scheduled date of hearing, parties may submit to the department, by electronic transmission or mail, any documents a party would like to offer as exhibits at the hearing. Copies of the documents submitted by the parties, as well as all documents that are contained in the department's records that will be introduced as exhibits, must be mailed, or sent by electronic transmission, to all parties or the parties' authorized representatives by the department in advance of the hearing.

(b) If a party requests to introduce additional documents during the hearing, and the hearing officer rules that the documents should be considered, the requesting party must provide copies of the documents to the hearing officer and the other party. The record must be left open for sufficient time for the submission of a written response to the documents. The response may be sent by mail or electronic transmission. The hearing officer may, when appropriate, reconvene the hearing to obtain a response or permit cross-examination regarding the late filed exhibits.

Subd. 17. **Access to data.** The parties to a hearing must be allowed reasonable access to department data necessary to represent themselves in the hearing. Access to data must be consistent with all laws relating to data practices. The data must be provided by the department at no cost and mailed or sent by electronic transmission to the party or the party's authorized representative.

Subd. 18. **Subpoenas and discovery.** (a) The hearing officer may issue subpoenas to compel the attendance of witnesses, the production of documents, or other exhibits upon a showing of necessity by the requesting party. Requests for issuance of subpoenas must be made to the department, by electronic transmission or mail, sufficiently in advance of the scheduled hearing to allow for the service of the subpoenas. The requesting party must identify the person or documents to be subpoenaed and the subject matter and necessity of the evidence requested. A request for a subpoena may be denied if the testimony or documents sought would be irrelevant, immaterial, or unduly cumulative or repetitious.

(b) If a request for a subpoena has been denied, the hearing officer must reconsider the request during the hearing and determine whether the request was properly denied. If the hearing officer determines that the request for a subpoena was not properly denied, the hearing officer must continue the hearing to allow for service of and compliance with the subpoena. The hearing officer may issue a subpoena even if a party has not requested one.

(c) Within five calendar days following request by another party, each party must disclose the name of the party's attorney or other authorized representative and the names of all witnesses the party intends to have testify at the hearing. The request and the response may be made by mail or by electronic transmission. Any witnesses unknown at the time of the request must be disclosed as soon as they become known. If a party fails to comply with the disclosure requirements, the hearing officer may, upon notice to the parties, continue the hearing.

Subd. 19. **Disqualification of hearing officer.** (a) A hearing officer must request to be removed from any case by the department where the hearing officer believes that presiding over the case would create the appearance of impropriety. The department must remove a hearing officer from any case if the hearing officer has a financial or personal interest in the outcome.

(b) Any party may request the removal of a hearing officer by submitting to the department, by mail or electronic transmission, a written statement of the basis for removal. The department must decide the fitness of the hearing officer to hear the particular case.

Subd. 20. **Public access to hearings and recording of hearings.** (a) Hearings are not public. Only parties, the parties' authorized representatives and witnesses, and authorized department personnel are permitted to participate in or listen to hearings. If any other person wishes to listen to or sit in on a hearing, the parties must provide their consent as required by section 13.05, subdivision 4.

(b) The hearing officer must make a recording of all testimony that is the official record. No other voice recordings or pictures may be made of any party, representative, or witness during the hearing.

Subd. 21. **Administration of oath or affirmation.** A hearing officer has authority to administer oaths and affirmations. Before testifying, every witness is required to declare to testify truthfully, by oath or affirmation under sections 358.07 and 358.08.

Subd. 22. **Receipt of evidence.** Only evidence received into the record of any hearing may be considered by the hearing officer. The parties may stipulate to the existence of any fact or the authenticity of any exhibit. All competent, relevant, and material evidence, including records and documents in the possession of the parties that are offered into evidence, are part of the hearing record. A hearing officer may receive any evidence that possesses probative value, including hearsay, if it is the type of evidence on which reasonable, prudent persons are accustomed to rely in the conduct of their serious affairs. A hearing officer may exclude any evidence that is irrelevant, immaterial, unreliable, or unduly repetitious. A hearing officer is not bound by statutory and common law rules of evidence. The rules of evidence may be used as a guide in determining the quality of evidence offered. A hearing officer may draw adverse inferences from the refusal of a party or witness to testify on the basis of any privilege. A hearing officer may only use reliable, probative, and substantial evidence as a basis for decision.

Subd. 23. **Official notice.** A hearing officer may take official notice of matters of common knowledge and may take notice of facts within the hearing officer's specialized knowledge in the field of paid leave. The hearing officer must state on the record any fact that is judicially noticed. The hearing officer must give the parties an opportunity to contest the noticed facts.

History: *2024 c 127 art 73 s 23*

268B.085 NOTICE TO EMPLOYER; SCHEDULES.

Subdivision 1. **Notice to employer.** (a) If the need for leave is foreseeable, an employee must provide the employer at least 30 days' advance notice before leave under this chapter is to begin. If 30 days' notice is not practicable because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable. Whether leave is to be continuous or is to be taken intermittently, notice need only be given one time, but the employee must advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. In those cases where the employee is required to provide at least 30 days' notice of foreseeable leave and does not do so, the employee must explain the reasons why notice was not practicable upon request from the employer.

(b) "As soon as practicable" means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. When an employee becomes aware of a need for leave under this chapter less than 30 days in advance, it should be practicable for the employee to provide notice of the need for leave either the same day or the next day, unless the need for leave is based on a medical emergency.

In all cases, however, the determination of when an employee could practicably provide notice must take into account the individual facts and circumstances.

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

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

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

(f) An employer may require that an employee taking leave under this chapter provide a copy of the certification under section 268B.06, subdivision 3. Upon written request from the employer, the employee shall provide a copy of the certification as soon as practicable and possible given all of the facts and circumstances in the individual case. Providing certification at or around the time the employee provides a certification to the department shall be considered practicable.

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

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

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

(1) attend counseling sessions;

(2) appear in court;

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

(4) submit to a physical examination; or

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

Subd. 3. **Intermittent schedule.** (a) Leave under this chapter, based on a serious health condition, may be taken intermittently if such leave is reasonable and appropriate to the needs of the individual with the serious health condition. For all other leaves under this chapter, leave may be taken intermittently. Intermittent leave is leave taken in separate blocks of time due to a single, seven-day qualifying event.

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

(c) An employee requesting leave taken intermittently shall provide the employer with a schedule of needed workdays off as soon as practicable and must make a reasonable effort to schedule the intermittent leave so as not to disrupt unduly the operations of the employer. If this cannot be done to the satisfaction of both employer and employee, the employer cannot require the employee to change their leave schedule in order to accommodate the employer.

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

History: *2023 c 59 art 1 s 17; 2024 c 127 art 73 s 24*

268B.09 EMPLOYMENT PROTECTIONS.

Subdivision 1. **Retaliation prohibited.** (a) An employer must not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for requesting or obtaining benefits or leave, or for exercising any other right under this chapter.

(b) For the purposes of this section, the term "leave" includes but is not limited to:

(1) leave taken for any day for which the commissioner has determined that the employee is eligible for benefits or leave under this chapter; or

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

(c) In addition to the remedies provided in subdivision 8, the commissioner of labor and industry may also issue a penalty to the employer of not less than $1,000 and not more than $10,000 per violation, payable to the employee aggrieved. In determining the amount of the penalty under this subdivision, the appropriateness of the penalty to the size of the employer's business and the gravity of the violation shall be considered.

Subd. 2. **Interference prohibited.** An employer must not obstruct or impede an application for leave or benefits or the exercise of any other right under this chapter. In addition to the remedies provided in subdivision 8, the commissioner of labor and industry may also issue a penalty to the employer of not less than $1,000 and not more than $10,000 per violation, payable to the employee aggrieved. In determining the amount of the penalty under this subdivision, the appropriateness of the penalty to the size of the employer's business and the gravity of the violation shall be considered.

Subd. 3. **Waiver of rights void.** (a) Any agreement to waive, release, or commute rights to benefits or any other right under this chapter is void, except for a voluntary settlement agreement resolving disputed claims or a valid separation agreement releasing putative claims.

(b) Any provision, whether oral or written, of a lease, contract, or other agreement or instrument that purports to be a waiver by an individual of any right or remedy provided in this chapter is contrary to public policy and void if the waiver or release purports to waive claims arising out of acts or practices that occur after the execution of the waiver or release.

(c) A waiver or release of rights or remedies secured by this chapter that purports to apply to claims arising out of acts or practices prior to, or concurrent with, the execution of the waiver or release may be rescinded within 15 calendar days of its execution, except that a waiver or release given in settlement of a claim filed with the department or with another administrative agency or judicial body is valid and final upon execution. A waiving or releasing party must be informed in writing of the right to rescind the waiver or release. To be effective, the rescission must be in writing and delivered to the waived or released party by hand, electronically with the receiving party's consent, or by mail within the 15-day period. If delivered by mail, the rescission must be:

(1) postmarked within the 15-day period;

(2) properly addressed to the waived or released party; and

(3) sent by certified mail, return receipt requested.

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

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

(b) This subdivision may be waived for employees who are working in the construction industry under a bona fide collective bargaining agreement that requires employer contributions to a multiemployer health plan pursuant to United States Code, title 29, section 186(c)(5), but only if the waiver is set forth in clear and unambiguous terms in the collective bargaining agreement and explicitly cites this subdivision.

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. Except as provided under subdivision 7, 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, practice, or contract 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 for which they receive overtime pay, the employee is ordinarily entitled to a position with overtime pay and overtime hours on return from leave under this chapter. If a pay premium, such as a shift differential, or overtime has been decreased or eliminated for other similarly classified employees, an employee is not entitled to restoration of the pay premium or overtime.

(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, 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, paragraph (a), clauses (2) and (3), or 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 maintain group health plan benefits and 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 and all damages recoverable by law;

(ii) reasonable interest on the amount of damages awarded; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in item (i) and the interest described in item (ii), except that if an employer who has violated the provisions of this section proves to the satisfaction of the court that the act or omission which violated the provisions of this section was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of the provisions of this section, the court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under items (i) and (ii), respectively; and

(2) such injunctive and other equitable relief as determined by a court or jury, 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) Rule 23 of the Rules of Civil Procedure applies to this section.

(d) 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.

(e) 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.

(f) An employee bringing a civil action under this section is entitled to a jury trial. An employee cannot waive their right to a jury trial under this section including, but not limited to, by signing an agreement to submit claims to arbitration.

History: *2023 c 59 art 1 s 18; 2024 c 127 art 73 s 25-27*

268B.10 SUBSTITUTION OF A PRIVATE PLAN.

Subdivision 1. **Application for substitution.** (a) 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 protections under section 268B.09. Employers may apply for approval of private plans that exceed the benefits provided to employees under this chapter. An employee covered by a private plan under this section retains all applicable rights and remedies under section 268B.09.

(b) An insurer must file every form, application, rider, endorsement, and rate used in connection with an insurance product that provides coverage for paid family and medical leave benefits as described in this section with the commissioner at least 60 days prior to the form or rate's effective date. The commissioner may extend this filing review period for an additional period not to exceed 60 days. If any form, rate, or amendment is not disapproved by the commissioner within the filing review period, the insurer may implement it. If the commissioner notifies an insurer that has filed any form or rate that the form or rate does not comply with this section, section 62A.02, or chapter 72A, it is unlawful for the insurer to issue or use the form or rate. In the notice, the commissioner shall specify the reasons for disapproval.

(c) Any insurer authorized to write accident and sickness insurance in Minnesota has the power to issue an insurance product that provides coverage for paid family and medical leave benefits as described in this section.

Subd. 2. **Private plan requirements; medical benefit program.** The commissioner, in consultation with the commissioner of commerce, must approve an application for private provision of the medical benefit program if the commissioner determines:

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

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

(3) the weekly benefits payable under the private plan for any week are at least equal to the weekly benefit amount payable under this chapter;

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

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

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

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

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

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

(10) coverage will continue under the private plan while an employee remains employed by the employer. For former employees, coverage for the purposes of benefits applies until the individual is hired by a new employer or 26 weeks pass, whichever occurs first; and

(11) if an application for leave is filed by a former employee to a private plan, the plan pays benefits for the totality of the leave. Private plans may not cut off eligibility for a former employee during the course of an approved leave.

Subd. 3. **Private plan requirements; family benefit program.** The commissioner, in consultation with the commissioner of commerce, must approve an application for private provision of the family benefit program if the commissioner determines:

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

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

(3) the weekly benefits payable under the private plan for any week are at least equal to the weekly benefit amount payable under this chapter;

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

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

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

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

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

(9) the private plan will allow any employee covered under the private plan who is eligible to receive family benefits under this chapter to receive family benefits under the employer plan;

(10) coverage will continue under the private plan while an employee remains employed by the employer. For former employees, coverage for the purposes of benefits applies until the individual is hired by a new employer or 26 weeks pass, whichever occurs first; and

(11) if an application for leave is filed by a former employee to a private plan, the private plan is required to pay benefits for the totality of the leave. Private plans must not discontinue eligibility for a former employee during the course of an approved leave.

Subd. 4. **Surety bond requirement.** If the private plan is in the form of self-insurance, the employer shall file with its application for private provision of the medical benefit or family benefit program a surety bond in an amount equal to the employer's annual premium that it would otherwise be required to pay to the family and medical benefit insurance account. The surety bond must be in a form approved by the commissioner and issued by a surety company authorized to transact business in Minnesota.

Subd. 5. **Private plan requirements; timing of payment.** Private plan benefits may be paid to align with the employer's payroll cycle or according to the terms of the approved private plan.

Subd. 6. **Private plan requirements; weekly benefit determination.** (a) For purposes of determining the family and medical benefit amount and duration under a private plan, the weekly benefit amount and

duration shall be based on the employee's typical work week and wages earned with the employer at the time of an application for benefits. If an employer does not have complete base period wage detail information, the employer may accept an employee's certification of wage credits, based on the employee's records.

(b) In the event that an employee's request for benefits is denied, in whole or in part, or the amount of the benefits is contested, the employee has the right to request administrative review of a decision by the private plan within 30 calendar days. If the private plan maintains the denial, the employee may appeal to the department as permitted in section 268B.08.

Subd. 7. **Use of private insurance products.** Nothing in this section prohibits an employer from meeting the requirements of a private plan through a private insurance product. If the employer plan involves a private insurance product, that insurance product must be approved by the commissioner of commerce and be issued by an insurance company authorized to transact insurance in this state.

Subd. 8. **Private plan approval and oversight fee.** An employer with an approved private plan is not required to pay premiums established under section 268B.14. An employer with an approved private plan is responsible for a private plan approval and oversight fee equal to $250 for employers with fewer than 50 employees, $500 for employers with 50 to 499 employees, and $1,000 for employers with 500 or more employees. The employer must pay this fee (1) upon initial application for private plan approval, and (2) any time the employer applies to amend the private plan. The commissioner must review and report on the adequacy of this fee to cover private plan administrative costs annually beginning January 1, 2027, as part of the annual report established in section 268B.25.

Subd. 9. **Plan duration.** A private plan under this section must be in effect for a period of at least one year and, thereafter, continuously unless the commissioner finds that the employer has given notice of withdrawal from the plan in a manner specified by the commissioner in this section or rule. The plan may be withdrawn by the employer within 30 days of the effective date of any law increasing the benefit amounts or within 30 days of the date of any change in the rate of premiums. If the plan is not withdrawn, it must be administered to provide the increased benefit amount or change in the rate of the employee's premium on the date of the increase or change.

Subd. 9a. **Plan changes during approved leave.** If an employee is using approved leave under this chapter when their employer changes from the state plan to a private plan, from a private plan to the state plan, or from one private plan to another private plan, the plan under which the employee was covered when their benefits were approved is required to continue paying benefits for continuous, intermittent, and reduced schedule leave through the duration previously approved. If the employee requests an extension of their original leave, or recertification is required, the employee may reapply for benefits with their new plan.

Subd. 10. **Employer reimbursement.** If an employer meeting the requirements of a private plan through an insurance product under subdivision 6 has made advance payments of benefits due under this chapter or has made payments to an employee in like manner as wages during any period of family or medical leave for which the employee is entitled to the benefits provided by this chapter, the employer is entitled to be reimbursed by the carrier or third party administrator out of any benefits due or to become due for the family or medical leave, if the claim for reimbursement is filed with the carrier prior to payment of the benefits by the carrier.

Subd. 11. [Never effective, 2024 c 127 art 73 s 51]

Subd. 12. **Employees no longer covered.** (a) An employee is no longer covered by an approved private plan if the commissioner revokes the approval of the private plan.

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

Subd. 12a. **Former employees and benefit applications.** Covered individuals that have been separated from an employer with a private plan for less than 26 weeks shall file applications for benefits as follows:

(1) if the former employee remains unemployed on the date that an application for benefits is filed, the former employee shall submit an application for benefits with the private plan of their former employer; and

(2) if the former employee has become employed by a different employer at the time that an application for benefits is filed, the former employee shall submit an application for benefits based on the new employer's coverage. If the new employer is covered under the state plan, the former employee shall submit the application to the state. If the new employer has an approved private plan, the covered individual shall submit the application for benefits to the private plan in accordance with the requirements established by their employer.

Subd. 13. **Posting of notice regarding private plan.** An employer with a private plan must provide a notice prepared by or approved by the commissioner regarding the private plan consistent with section 268B.26.

Subd. 14. **Amendment.** (a) The commissioner must approve any amendment, other than those required by this chapter, to a private plan adjusting the provisions thereof, if the commissioner determines:

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

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

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

Subd. 15. **Successor employer.** A private plan in effect at the time a successor acquires the employer organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the approved private plan and must not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the commissioner. A successor may terminate a private plan with notice to the commissioner and within 90 days from the date of the acquisition.

Subd. 16. **Revocation of approval by commissioner.** (a) The commissioner may terminate any private plan if the commissioner determines the employer or agents of the employer:

(1) failed to pay benefits;

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

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

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

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

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

(d) 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. 17. **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.

Subd. 18. **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. 19. **Audit and investigation.** The commissioner may investigate and audit plans approved under this section both before and after the plans are approved.

Subd. 20. **Voluntary termination of an approved private plan by an employer.** (a) An employer may terminate its approved private plan by notifying the commissioner in writing at least 30 days before the voluntary termination's effective date.

(b) The employer must notify employees of the voluntary termination no later than 30 days before the termination's effective date.

(c) An employer must continue the approved private plan's coverage through the termination's effective date. If an employer does not continue the approved private plan's coverage through the termination's effective date, the commissioner shall assess against the employer a fine per employee per day the employee was not covered through the termination's effective date. The fine per employee per day will equal the employer's and employee's total premium amount for a year, divided by 365.

Subd. 21. **Employer obligations after termination of private plan approval.** (a) Within seven days of the effective date of a voluntary or involuntary termination of private plan approval, the employer must notify all employees of the termination and notify all employees that they are under the state plan as a result of the termination.

(b) If an employer's workforce becomes covered by the state plan because the employer's private plan approval was voluntarily or involuntarily terminated, the employer must remain covered by the state plan and pay premiums to the state for a period of at least three years.

Subd. 21a. **Filing obligation.** Employers covered under a private plan are subject to the quarterly wage reporting requirements under section 268B.12.

History: *2023 c 59 art 1 s 19; 2024 c 127 art 73 s 28-37*

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

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

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

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

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

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

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

History: *2023 c 59 art 1 s 20*

268B.12 WAGE REPORTING.

Subdivision 1. **Wage detail report.** (a) Each employer must submit, under the employer 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 and for each seasonal employee during the calendar quarter, the employee's name, 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 to 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, may be 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, may be subject to an administrative service fee equal to two percent of the total wages for each employee for whom the information is completely missing.

(c) An employer shall not be subject to any penalty under this section upon a reasonable showing that the employer's act or omission which violated the provisions of this section was in good faith or that the employer had reasonable grounds for believing that the act or omission was not a violation of the provisions of this section.

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.

History: *2023 c 59 art 1 s 21*

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.

History: *2023 c 59 art 1 s 22*

268B.14 PREMIUMS.

Subdivision 1. **Payments.** (a) Family and medical leave premiums accrue and become payable by each employer, except for an employer with an approved private plan under section 268B.10, 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, and subject to subdivision 6, employers must pay a minimum of 50 percent of the annual premiums paid under this section. Employees, through a deduction in their wages to the employer, must pay the remaining portion, if any, of the premium not paid by the employer. Such deductions for any given employee must be in equal proportion to the premiums paid based on the wages of that employee. 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 employee by any applicable statute, regulation, rule, ordinance, or government resolution or policy, 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. [Never effective, 2024 c 127 art 73 s 51]

Subd. 5a. **Small employer premium rate.** (a) Small employers are eligible for the premium rates provided by this subdivision if the employer:

(1) has 30 or fewer employees pursuant to subdivision 5b; and

(2) the average wage for that employer as calculated in subdivision 5c is less than or equal to 150 percent of the state's average wage in covered employment for the basis period.

(b) The premium rate for small employers eligible under this subdivision is 75 percent of the annual premium rate calculated in subdivisions 6 and 7, as follows:

(1) employers must pay a minimum of 25 percent of the rate calculated in subdivisions 6 and 7. Employers shall not deduct from any employees' pay to fund the employer portion of the premium; and

(2) employees must pay the remaining portion due under this subdivision, if any, of the premium not paid by the employer. The employer must make wage deductions as necessary under this subdivision to fund the employee portion of the premium.

Subd. 5b. **Employee count.** (a) The basis period for determining premiums under:

(1) subdivision 5a;

(2) average employer wages under subdivision 5c; and

(3) eligibility for small employer assistance grants under section 268B.29 for any tax year shall be the four-quarter period ending September 30 of the prior year.

(b) For each employer that has been covered for the entirety of the basis period, the maximum number of quarterly wage records reported by the employer during the basis period shall be used to determine premiums under subdivision 5a and eligibility for small employer assistance grants under section 268B.29.

(c) For any employer not covered for the entirety of the basis period, the number of employees used to determine premiums under subdivision 5a and eligibility for small employer assistance grants under section 268B.29 shall be based on the number of employees working in Minnesota the employer estimates they will employ in the following calendar year.

(d) If upon a review of the actual number of wage records reported, it is found that a new employer's estimate at time of registration was ten percent or more less than the actual number of records reported, the employer's premiums under subdivision 5a and eligibility for small employer assistance grants under section 268B.29 shall be recalculated based on the wage records reported.

Subd. 5c. **Average wage for employer.** (a) For each employer that has been covered for the entirety of the basis period, the employer's average wage shall be calculated by dividing the maximum amount of covered wages reported by the employer in a single quarterly wage record during the basis period by the maximum number of quarterly wage records reported by the employer during the basis period.

(b) For any employer not covered for the entirety of the basis period, the employer's average wage shall by calculated by dividing the employer's estimated amount of covered wages in the following tax year by

the employer's estimated number of employees working in Minnesota the employer will employ in the following calendar year.

(c) If upon a review of the actual amount of covered wages reported it is found that a new employer's estimate at time of registration was ten percent or more less than the actual amount of covered wages, the employer's premiums under subdivision 5a and eligibility for small employer assistance grants under section 268B.29 shall be recalculated based on the wage records reported.

Subd. 6. **Annual employer premium rates.** The employer premium rates beginning January 1, 2026, shall be as follows:

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

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

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

Subd. 7. **Premium rate adjustments.** The commissioner may adjust the annual premium rates pursuant to this section prior to January 1, 2026. By July 31, 2026, and then by July 31 of each year thereafter, the commissioner must adjust the annual premium rates for the following calendar year based on program historical experience and sound actuarial principles and so that the projected fund balance as a percentage of total program expenditure does not fall below 25 percent. The commissioner shall contract with a qualified independent actuarial consultant to conduct an actuarial study for this purpose no less than every year. A copy of all actuarial studies, and any revisions or other documents received that relate to an actuarial study, must be provided promptly to the chairs and ranking minority members of the legislative committees with jurisdiction over this chapter. All actuarial studies, and any revisions or other documents received that relate to an actuarial study, must also be filed with the Legislative Reference Library in compliance with section 3.195. A qualified independent actuarial consultant is one who is a Fellow of the Society of Actuaries (FSA) and a Member of the American Academy of Actuaries (MAAA) and who has experience directly relevant to the analysis required. In no year shall the annual premium rate exceed 1.1 percent of taxable wages paid to each employee.

Subd. 8. **Deposit of premiums.** All premiums collected under this section must be deposited into the family and medical benefit insurance account.

Subd. 9. **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.

History: *2023 c 59 art 1 s 23; 2024 c 127 art 73 s 38-42; 1Sp2025 c 6 art 4 s 27*

268B.145 INCOME TAX WITHHOLDING AND STATE TAXATION.

Subdivision 1. **Federal income tax.** If the Internal Revenue Service determines that benefits received under this chapter are subject to federal income tax, the applicant may elect to have federal income tax deducted and withheld from the applicant's benefits.

Subd. 2. **State income tax.** Benefits received under this chapter are subject to state income tax. If the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld.

Subd. 3. **Notification.** Upon filing an application for benefits, the applicant must be informed that:

(1) benefits are subject to federal and state income tax;

(2) there are requirements for filing estimated tax payments;

(3) the applicant may elect to have federal income tax withheld from benefits;

(4) if the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld; and

(5) at any time during the benefit year the applicant may change a prior election.

Subd. 4. **Withholding.** If an applicant elects to have federal income tax withheld, the commissioner must deduct ten percent for federal income tax. If an applicant also elects to have Minnesota state income tax withheld, the commissioner must make an additional five percent deduction for state income tax. Any amount deducted under section 268B.06 has priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding. An election to have income tax withheld may not be retroactive and only applies to benefits paid after the election.

Subd. 5. **Transfer of funds.** The amount of any benefits deducted under this section remains in the family and medical benefit insurance account until transferred to the Internal Revenue Service, or the Department of Revenue, as an income tax payment on behalf of the applicant.

Subd. 6. **Correction of errors.** Any error that resulted in underwithholding or overwithholding under this section must not be corrected retroactively.

Subd. 7. **Effect of payments.** Any amount deducted under this section is considered as benefits paid to the applicant.

History: *2023 c 59 art 1 s 24*

268B.15 COLLECTION OF PREMIUMS.

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

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

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

(2) interest on past due premiums; then

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

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

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

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

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

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

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

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

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

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.

(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.

History: *2023 c 59 art 1 s 25; 2024 c 127 art 73 s 43*

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 leave, 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.

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

History: *2023 c 59 art 1 s 26; 2024 c 127 art 73 s 44*

268B.16 COMPROMISE.

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

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

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

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

History: *2023 c 59 art 1 s 27*

268B.17 ADMINISTRATIVE COSTS.

Beginning January 1, 2026, and each calendar year thereafter, the commissioner may spend up to seven percent of projected benefit payments for that calendar year for the administration of this chapter. The department may enter into interagency agreements with the Department of Labor and Industry and the Department of Commerce, including agreements to transfer funds, subject to the limit in this section, for the Department of Labor and Industry to fulfill its enforcement authority of this chapter and for the Department of Commerce to fulfill the requirements of this chapter.

History: *2023 c 59 art 1 s 28*

268B.18 PUBLIC OUTREACH.

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

History: *2023 c 59 art 1 s 29*

268B.185 BENEFIT OVERPAYMENTS.

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

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

Subd. 2. **Overpayment because of misrepresentation.** (a) An applicant has committed misrepresentation if the applicant is overpaid benefits by making an intentional false statement or representation in an effort to fraudulently collect benefits. Overpayment because of misrepresentation does not occur where there is an unintentional mistake or a good faith belief as to the eligibility or correctness of the statement or representation.

(b) After the discovery of facts indicating misrepresentation, the commissioner must issue a determination of overpayment penalty assessing a penalty equal to 15 percent of the amount overpaid.

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

(d) The department is authorized to issue a determination of overpayment penalty under this subdivision within 24 months of the establishment of the leave upon which the benefits were obtained through misrepresentation.

Subd. 3. **Theft.** (a) An individual is guilty of theft and must be sentenced under section 609.52 if the individual obtains, or attempts to obtain, or aids or abets any other individual to obtain, by an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, benefits to which the individual is not entitled under this chapter.

(b) Any employer, or any officer or agent of an employer, or any other individual has committed fraud and is guilty of a crime, if, in order to avoid or reduce any payment required from an employer under this chapter, to improperly secure a grant under section 268B.29, or to prevent or reduce the payment of benefits to an applicant, they:

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

(2) knowingly fail to disclose a material fact; or

(3) knowingly advise or assist an employer in violating clause (1) or (2).

The individual is guilty of a gross misdemeanor if the value of the fraudulent activity is $500 or less. The individual is guilty of a felony if the value of the fraudulent activity exceeds $500.

Subd. 4. **Interest.** For any family and medical leave benefits obtained by misrepresentation, and any penalty amounts assessed under subdivision 2, the commissioner must assess interest on any amount that remains unpaid beginning 30 calendar days after the date of a determination of overpayment penalty. Interest is assessed at the rate of six percent per year. A determination of overpayment penalty must state that interest will be assessed. Interest is not assessed on unpaid interest. Interest collected under this subdivision is credited to the family and medical benefit insurance account.

Subd. 5. **Offset of benefits.** The commissioner may offset from any future family and medical leave benefits otherwise payable the amount of an overpayment. No single offset may exceed 20 percent of the amount of the payment from which the offset is made.

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

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

Subd. 7. **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.

Subd. 8. **Court fees; collection fees.** (a) If the department is required to pay any court fees in an attempt to enforce collection of overpaid benefits, penalties, or interest, the amount of the court fees may be added to the total amount due.

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

(c) If the Internal Revenue Service assesses a fee from the department 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 account and that amount credited to the total amount due from the applicant.

History: *2023 c 59 art 1 s 30; 2024 c 127 art 73 s 45*

268B.19 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 assisting the applicant in receiving benefits fraudulently. The penalty is $500 or the amount of benefits determined to be overpaid, whichever is greater.

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

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

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

(3) knowingly failed to disclose a material fact.

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

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

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

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

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

History: *2023 c 59 art 1 s 31; 2024 c 127 art 73 s 46*

268B.21 RECORDS; AUDITS.

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

(b) For the purpose of administering this chapter, the commissioner has the power to audit, examine, or cause to be supplied or copied, any books, correspondence, papers, records, or memoranda that are the property of, or in the possession of, an employer or any other person at any reasonable time and as often as may be necessary. Subpoenas may be 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.

History: *2023 c 59 art 1 s 32*

268B.22 SUBPOENAS; OATHS.

(a) The commissioner or hearing officer 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.

History: *2023 c 59 art 1 s 33*

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 or personal delivery. 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 their respective database system.

(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subd. 4. **Collection by civil action.** (a) Any amount due under this chapter, from an applicant or employer, may be collected by civil action in the name of the state of Minnesota. Civil actions brought under this subdivision must be heard as provided under section 16D.14. In any action, judgment must be entered in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

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

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

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

History: *2023 c 59 art 1 s 34*

268B.24 CONCILIATION SERVICES.

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

History: *2023 c 59 art 1 s 35*

268B.25 ANNUAL REPORTS.

(a) Beginning on or before January 1, 2027, the commissioner must annually report to the Department of Management and Budget and the house of representatives and senate committee chairs with jurisdiction over this chapter on program administrative expenditures and revenue collection for the prior fiscal year, including but not limited to:

(1) total revenue raised through premium collection;

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

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

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

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

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

(7) an accounting of required outreach expenditures;

(8) summary of private plan approvals including the number of employers and employees covered under private plans; and

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

(b) Beginning on or before January 1, 2027, the commissioner must annually publish a publicly available report providing the following information for the previous fiscal year:

(1) total eligible claims;

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

(3) claimant demographics by age, race or ethnicity, gender, average weekly wage, occupation, and the type of leave taken;

(4) the percentage of claims denied and the reasons therefor, including but not limited to insufficient information and ineligibility and the reason therefor;

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

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

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

(8) average duration for cases completed;

(9) the number of cases remaining open at the close of such year; and

(10) the employers who received approval by the department for seasonal employee classification and the number of seasonal employees approved for each year.

History: *2023 c 59 art 1 s 36*

268B.26 NOTICE REQUIREMENTS.

(a) Each employer must post in a conspicuous place on each of its premises a workplace notice prepared by the commissioner providing notice of benefits available under this chapter. The required workplace notice must be in English and each language other than English which is the primary language of five or more employees or independent contractors of that workplace, if such notice is available from the department.

(b) Each employer must issue to each employee not more than 30 days from the beginning date of the employee's employment, or 30 days before premium collection begins, whichever is later, the following written information provided by the department in the primary language of the employee:

(1) an explanation of the availability of family and medical leave benefits provided under this chapter, including rights to reinstatement and continuation of health insurance;

(2) the amount of premium deductions made by the employer under this chapter;

(3) the employer's premium amount and obligations under this chapter;

(4) the name and mailing address of the employer;

(5) the identification number assigned to the employer by the department;

(6) instructions on how to file a claim for family and medical leave benefits;

(7) the mailing address, email address, and telephone number of the department; and

(8) any other information required by the department.

Delivery is made when an employee provides written or electronic acknowledgment of receipt of the information. In cases where an employee refuses to acknowledge receipt, an employer must be able to demonstrate the way the employee had been notified.

(c) An employer that fails to comply with this section may be issued, for a first violation, a civil penalty of $50 per employee, and for each subsequent violation, a civil penalty of $300 per employee. The employer shall have the burden of demonstrating compliance with this section.

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

(e) The department shall prepare a uniform employee notice form for employers to use that provides the notice information required under this section. The commissioner shall prepare the uniform employee notice in the five most common languages spoken in Minnesota.

(f) Each employer who employs or intends to employ seasonal employees as defined in section 268B.01, subdivision 35, must issue to each seasonal employee a notice that the employee is not eligible to receive paid family and medical leave benefits while the employee is so employed. The notice must be provided at the time an employment offer is made, or within 30 days of November 1, 2025, for the employer's existing seasonal employees, and be in a form provided by the department. Delivery is made when an employee provides written or electronic acknowledgment of receipt of the information, or signs a statement indicating the employee's refusal to sign such acknowledgment.

History: *2023 c 59 art 1 s 37; 2024 c 127 art 73 s 47*

268B.27 RELATIONSHIP TO OTHER LEAVE; CONSTRUCTION.

Subdivision 1. **Concurrent leave.** An employer may require leave taken under this chapter to run concurrently with leave taken for the same purpose under section 181.941 or the Family and Medical Leave Act, United States Code, title 29, sections 2601 to 2654, as amended.

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

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

(2) prohibit an employer from providing additional benefits, including but not limited to covering the portion of earnings not provided during periods of leave covered under this chapter including through a supplemental benefit payment, as defined under section 268B.01, subdivision 41;

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

(4) be applied so as to create any power or duty in conflict with federal law.

History: *2023 c 59 art 1 s 38; 2024 c 127 art 73 s 48*

268B.28 SEVERABLE.

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

History: *2023 c 59 art 1 s 39*

268B.29 SMALL EMPLOYER ASSISTANCE GRANTS.

(a) Employers with 30 or fewer employees as calculated under section 268B.14, subdivision 5b, and an average wage for that employer under section 268B.14, subdivision 5c, less than or equal to 150 percent of the state's average wage in covered employment for the prior year may apply to the department for grants under this section.

(b) The commissioner may approve a grant of up to $3,000 if the employer hires a temporary worker, or increases another existing worker's wages, to substitute for an employee on family or medical leave for a period of seven days or more.

(c) The maximum total grant per eligible employer in a calendar year is $6,000.

(d) Grants must be used to hire temporary workers or to increase wages for current employees. To be eligible for consideration for a grant under this section, the employer must documentation attest, in a manner and format prescribed by the commissioner, that:

(1) the temporary worker hired or wage-related costs incurred are due to an employee's use of leave under this chapter;

(2) the amount of the grant requested is less than or equal to the additional costs incurred by the employer; and

(3) the employer meets the revenue requirements in paragraph (a).

(e) Applications shall be submitted and processed in a form and manner determined by the commissioner within each calendar year until funding is exhausted. Applications received after funding has been exhausted in a calendar year are not eligible for reimbursement.

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

(g) Unless additional funds are appropriated, the commissioner may award grants under this section up to a maximum of $5,000,000 per calendar year from the family and medical benefit insurance account.

History: *2023 c 59 art 1 s 40; 2024 c 127 art 73 s 49*

268B.30 DATA PRIVACY.

(a) Except as provided by this section, data collected, created, or maintained under this chapter are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and must not be disclosed except according to a district court order or section 13.05. A subpoena is not considered a district court order.

(b) Data classified under paragraph (a) may be disseminated to and used by the following without the consent of the subject of the data:

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

(2) the unemployment insurance division, to the extent necessary to administer the programs established under this chapter and chapter 268;

(3) employers, to the extent necessary to support adjudication of application requests and to support the employer's administration of a leave of absence;

(4) health care providers, to the extent necessary to support verification of health care conditions and qualifying events;

(5) the public authority responsible for child support in Minnesota or any other state in accordance with section 518A.83;

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

(7) the Department of Revenue, to the extent necessary for its duties under Minnesota laws;

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

(9) the Department of Labor and Industry, the Department of Commerce, and the Bureau of Criminal Apprehension for uses consistent with the administration of their duties under Minnesota law;

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

(11) the Department of Public Safety for support in identity verification;

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

(13) the Department of Health for the purposes of epidemiologic investigations;

(14) the Department of Corrections for the purposes of tracking incarceration of applicants; and

(15) contracted third parties, to the extent necessary to aid in identity verification, adjudication, administration, and evaluation of the program.

(c) Data on individuals and employers that are collected, maintained, or used by the department in an investigation under section 268B.19, 268B.21, 268B.22, or 268B.23 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.

(d) Data gathered by the department in the administration of this chapter 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.

History: *2024 c 80 art 8 s 68; 2024 c 127 art 73 s 50; 2025 c 35 art 3 s 17*