

Hello Senator Mann, Senator Maye Quade and Representative Richardson:

I am writing on behalf of Minnesota NELA and the Employee Lawyers Association of the Upper Midwest (ELA-UM) regarding the Paid Family Medical Leave bill (SF 2 and HF 2). First and foremost, we want to thank all of you for your tireless work in getting this bill passed (almost)! Our members, and our constituents (all workers in Minnesota) will immediately have their lives improved because of your work. Thank you so much.

Next, I do want to highlight a few items that our organizations encourage the conference committee to consider as it finalizes the bill:

1. The most important issue concerns the “Right to Leave” language that exists in HF 2 (line 32.2, Section 17) but does not exist in SF 2. The House language must be adopted to effectuate this bill. Without the “right to leave” language, the PFML is a fundamentally weaker law. Without it, employees who apply for leave under the program are not necessarily protected from losing their job. This eliminates job protection from a very large group of employees. This omits, for example, people who choose not to apply for monetary benefits even though they take protected leave (in fact, in the State of Washington this has been a significant percentage of employees), people who take leave before they have a chance to apply for benefits (i.e. emergency situations), and people who take leave under a good faith, but mistaken belief that they’re eligible but who actually are not. The House language is vital because it reflects how people use leave in reality. Someone who, in good faith (i.e. this is an ordinary person not trying to lie to or defraud their employer, which is the vast majority of people), thinks they need medical leave, should be assured they will not lose their jobs even if they’re mistaken. They may become pregnant, have a serious injury, need to care for a family member who suddenly became ill, etc., and they should know they can apply for leave without fear of losing their job. The absence of this language in the law would have a chilling effect on all employees needing to take protected leave because they would not have assurance that their job is protected until after the state makes a determination and any appeal issues have been exhausted, which could be weeks or months later. Without that security built in, we expect that a large number of people won’t use the benefits of this law for fear of losing their jobs. Importantly, nothing in the House language would prevent employers from taking appropriate disciplinary action in response to the rare case where an employee takes leave in bad faith, or lies about the need for leave. It simply ensures that people who have a genuine need to take leave under the bill will be protected when they do so.
2. The employment protections in HF 2 (Sec. 14, subds. 1-7) provide better protections for employees than SF 2 (Sec. 14, subds. 1-7) and should be adopted. In particular, the language prohibiting employers from requiring employees to waive any rights available under this law is clearer and stronger in HF 2, which is important to ensure the law functions as intended in workers’ daily lives. Similarly, the right to reinstatement is clearer and stronger in HF 2, which is necessary to ensure that workers use this program.
3. If the Committee does adopt any part of SF 2 Section 14, however, there is one provision that is very problematic and should be rejected: Sec. 14, Subd. 7(4), which was added on the Senate floor. We are concerned that this language may ultimately be an end run that could erode the right to reinstatement in large part. We appreciate the intent of an employer not being obligated to return an employee to work to a position that legitimately no longer exists for

business/financial reasons. That is understandable. But the bill already provides for that protection in the previous three sections (Sec. 14, Subd. 7(1)-(3)). Moreover, the federal version of the FMLA does not include the added language of Subd. 7(4), and it has not been a problem for decades. The proposed, additional language is not included in the FMLA regulations, where this language ultimately originates ([available here](#)). The House version does not have this additional language.

4. The remedies section in SF 2 (Sec. 14, subd. 8) is better for employees and should be adopted. In particular, the Senate bill's explicit recognition of a right to a jury trial is necessary to ensuring that workers have the same due process rights the legislature has given plaintiffs in other employment statutes.

If anyone would like to talk in more detail about this (or anything else) we are willing and able to do so and can make anything work with your schedules.

Thank you, again, for all of your work on this bill and on behalf of workers.

-Brian Rochel, President, Minnesota NELA

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