

**HF39 - 2E - Rehire and Retention of Laid Off Workers**

Chief Author: **Andrew Carlson**  
 Committee: **Ways And Means**  
 Date Completed: **2/21/2021 9:56:39 AM**  
 Agency: **Labor and Industry Dept**

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Dollars in Thousands					
General Fund	-	131	27	-	-
<b>Total</b>	<b>-</b>	<b>131</b>	<b>27</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>			<b>158</b>		<b>-</b>

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	.57	.23	-	-
<b>Total</b>	<b>-</b>	<b>.57</b>	<b>.23</b>	<b>-</b>	<b>-</b>

**LBO Analyst's Comment**

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

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**State Cost (Savings) Calculation Details**

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

\*Transfers In/Out and Absorbed Costs are only displayed when reported.

<b>State Cost (Savings) = 1-2</b>		<b>Biennium</b>			<b>Biennium</b>	
<b>Dollars in Thousands</b>		<b>FY2021</b>	<b>FY2022</b>	<b>FY2023</b>	<b>FY2024</b>	<b>FY2025</b>
General Fund	-	131	27	-	-	-
<b>Total</b>		<b>-</b>	<b>131</b>	<b>27</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>					<b>158</b>	<b>-</b>
<b>1 - Expenditures, Absorbed Costs*, Transfers Out*</b>						
General Fund	-	131	27	-	-	-
<b>Total</b>		<b>-</b>	<b>131</b>	<b>27</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>					<b>158</b>	<b>-</b>
<b>2 - Revenues, Transfers In*</b>						
General Fund	-	-	-	-	-	-
<b>Total</b>		<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Biennial Total</b>					<b>-</b>	<b>-</b>

**Bill Description**

This bill codifies new workers’ rights under 181.990 to 181.993 as the Emergency Rehire and Retention law. If enacted, it will provide re-employment rights and protections to certain workers who experienced a non-disciplinary employment layoff in the hotel, event-center, and airport hospitality sector, or who work in janitorial, building maintenance or security services for office, retail and other commercial buildings, following January 31, 2020 due to reasons related to and resulting from a declared public health emergency.

The bill requires employers related to the mentioned sectors to communicate electronically or in writing the availability of job positions to which laid-off personnel qualify for and are entitled to consideration for re-employment. If offered a position, the laid-off individual is afforded at least 5 business days to accept or decline the offer. The bill allows for employers to offer positions based upon an order of preference factors including a position being same or similar to the position most recently lost by the employee, or one in which they could qualify for if the same training is provided to a new employee hired into that position. Employers that reject a worker based upon lack of qualifications for a position must provide notice to the laid-off individual within 30 days that outlines whom was selected for the position and the reasons for disqualification.

Preferential re-employment rights in this bill also extend to successor employers in the sector. The bill requires incumbent employers to deliver to their successors within 15 days of the transfer of documents including name, address, date of hire, and employment occupation classification of each eligible employee. The successor is then required to retain the preferential list of these eligible workers and hire from it for a period of not less than 6 months from the transfer of documents date and preserve for a period of 3 years, records reflecting offers of employment to eligible employees. Employers who hire from this list must retain the individual for a period of not less than 90 days.

Successor employers must also retain eligible employees for a transitional period of 90 days and may not discharge without cause. Following 90 days, the employer must conduct written performance reviews of the re-employed and must retain these records for not less than 3 years.

The bill also provides worker protection from employer or successor employer retaliation for workers asserting their rights and requires the Department of Labor and Industry (DLI) to investigate employee or eligible employee complaints of employer violations outlined in the new law. If a violation is found, the law empowers the Department to award hiring and reinstatement rights, front pay and back pay during which the violation continues based upon their highest regular rate including the time lost due to the violation and the value of benefits they were entitled to receive.

The bill becomes effective the day following enactment and sunsets on December 31, 2022.

## Assumptions

This is a new state law so the Department anticipates that it will receive increased inquiries from employers and workers as a result of new state law requirements and protections. DLI assumes that the higher frequency of calls and complaints will occur from the date of enactment through December 31, 2022.

To quantify the number of inquiries and complaints anticipated, the Department must source from other data. First, the Department over the last two years has averaged 186 inquiries annually related specifically to the state minimum wage. There were more inquiries fielded by the Department following the enactment of the state minimum wage change in 2015 but data is not available to quantify that number. In the absence of that data, the Department anticipates this new right will generate more questions. To account for this, the Department doubles the average number of inquiries to 372 annually. Inquiries are considered requests for information handled by phone or email. An inquiry amounts to very limited engagement and is resolved in approximately 3-6 minutes. The total amount of time calculated to manage inquiries is immaterial and absorbed by existing staff.

### Enforcement:

This law expands the Department of Labor and Industry's labor standards enforcement responsibilities as it requires the Department to investigate all complaints received by employees or eligible employees alleging violations of the new 181.991. Further, it empowers the Department to make determinations of violation(s) and awards that may include employment reinstatement rights and back pay to complainants. For purposes of estimating the number of complaints the Department may receive we will use minimum wage complaint data. The Department received 104 complaints in the first year following enactment of the state minimum wage change in 2015, and 86 complaints the following year. Since that time, the Department has averaged 22.5 minimum wage related complaints per year. These first- and second-year complaint totals represented 0.05% and 0.04% respectively of the estimated 205,000 Minnesotans who were earning minimum wage in 2019. Second, the Department of Employment and Economic Development (DEED) reports that between March 2020 and January 2021 approximately 17,711 workers filed for unemployment in the targeted sectors of this bill. This is a smaller number than the estimated number of Minnesotans earning minimum wage. However, based upon the fact that this is a new law we anticipate more complaints in comparison to the rate of minimum wage complaints indicated above. Based upon a combination of the DEED number of claims data, and the DLI complaint percentage rate of complaints received, and doubling that number of complaints to account for the fact that this is a new law, DLI anticipates receiving approximately 20 complaints in the first year (FY 2022), 8 in the half year following (first half of FY 2023) The Department assumes that a greater percentage of the cases will require more investigative time due to their complexity.

Although the bill becomes effective the day following enactment, DLI assumes an effective date of 7/1/21 (FY22) for this note.

### FY2022 Complaints: 20

20% Complaint Cases (4)	x 24 hours per case =	96 hours
30% Complaint Cases (6)	x 40 hours per case =	240 hours
30% Complaint Cases (6)	x 60 hours per case =	360 hours
20% Compliant Cases (4)	x 120 hours per case =	<u>480 hours</u>
Total Investigative Hours:		1,176 Hours (0.57 FTE)

### FY2023 (first half only) Complaints: 8

20% Complaint Cases (1.6)	x 24 hours per case =	38 hours
30% Complaint Cases (2.4)	x 40 hours per case =	96 hours
30% Complaint Cases (2.4)	x 60 hours per case =	144 hours
20% Compliant Cases (1.6)	x 120 hours per case =	<u>192 hours</u>
Total Investigative Hours:		470 Hours (0.23 FTE)

The Department will need 0.57 FTE in FY2022, and 0.23 FTE in the first half of FY2023 to respond to inquiries and conduct investigations related to complaints received. Present Department attorney staffing can absorb any additional case workload as we assume this new area would be a very small percentage of current case work referred to the Department's Office of General Counsel (OGC).

**Outreach and Education:**

This proposal expands access to existing law that DLI enforces. \$50,000 in the first year would be used in outreach efforts to ensure employers and employees understand the change in law and know their rights. Outreach costs include printing, translations of materials, and marketing efforts.

**Technology:**

The Department is currently developing a new case management system to replace its current platform that will no longer be supported by MN.IT. Since this bill takes effect during or immediately after system implementation, the Department estimates a one-time \$13,000 for a vendor contract to make modifications required to support this bill.

**Expenditure and/or Revenue Formula**

<b>Labor Investigator Sr - MAPE 12L</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
FTE	0.57	0.23	0	0
Salary per FTE (midpoint)	66,190	66,190	-	-
Fringe Benefits (35% of Salary)	23,167	23,167	-	-
Indirect (22.50% of Salary/Fringe)	20,105	20,105	-	-
<b>Salary / Fringe / Indirect</b>	<b>62,393</b>	<b>25,176</b>	<b>-</b>	<b>-</b>
<b>Non-Personnel Services</b>	<b>5,161</b>	<b>2,082</b>	<b>-</b>	<b>-</b>
<b>Cumulative Cost</b>	<b>67,554</b>	<b>27,259</b>	<b>-</b>	<b>-</b>

<b>Cumulative Expenditures</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
Labor Investigator Sr	67,554	27,259	-	-
Outreach and Education	50,000	-	-	-
IT Case Mgmt Build	13,000	-	-	-
<b>Cumulative Expenditures</b>	<b>130,554</b>	<b>27,259</b>	<b>-</b>	<b>-</b>

**Long-Term Fiscal Considerations**

**Local Fiscal Impact**

**References/Sources**

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