

Subject Paid Family and Medical Leave Benefit Insurance Program

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Article 1: Family and Medical Benefits

Article 1 provides the substance of the new program under chapter 268B.

Section Description – Article 1: Family and Medical Benefits

- 1 **Family and medical insurance data [§ 13.719, subd. 7]**
Classifies data under chapter 268B as private or nonpublic under the Minnesota Data Practices Act, and allows sharing of the data between the Department of Employment and Economic Development and the Department of Labor and Industry.
- 2 **Compliance orders [§ 177.27, subd. 4]**
Gives enforcement powers over chapter 268B to the Commissioner of Labor and Industry.
- 3 **Required statement of earnings by employer [§ 181.032]**
Requires that employers include the amount deducted from employee paychecks for premiums under section 268B.12, subdivision 2, and the amount paid by employers as premiums be included on employee statement of earnings.
- 4 **Use of data [§ 268.19, subd. 1]**
Allows data gathered under the administration of Minnesota’s unemployment insurance statute to be used by the Family and Benefits Division of the Department of Employment and Economic Development as necessary to administer chapter 268B.
- 5 **Definitions [§ 268B.01]**
Provides a number of definitions of terms used throughout chapter 268B.
- 6 **Family and Medical Benefit Insurance Program creation [§ 268B.02]**
 - Subd. 1. Creation.** Creates the program and assigns responsibility for administration to the commissioner of employment and economic development.
 - Subd. 2. Creation of division.** Creates a division within the Department of Employment and Economic Development for administration of the program and requires the commissioner to appoint a director of the division.

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Subd. 3. Rulemaking. Allows the commissioner of employment and economic development to adopt rules to implement the program under the normal, note and comment, rulemaking procedures that typically take 18 months to two years.

Subd. 4. Account creation; appropriation. Creates an account in the special revenue fund and appropriates all money in the account to the commissioner of employment and economic development to pay benefits under and administer the program.

Subd. 5. Information technology services and equipment. Exempts the new department created under the bill from existing statutory requirements that the Office of MN.IT services be responsible for information technology and services.

7 Eligibility [§ 268B.03]

Subd. 1. Applicant. Specifies that an applicant who meets one of the criteria under the program is eligible for benefits.

Subd. 2. Wage credits. Requires an otherwise eligible applicant for benefits to have earned enough money through covered employment during the prior four complete quarters to qualify for unemployment insurance benefits. This is set in law as 5.3 percent of the state’s average annual wage rounded to the next lower \$100 increment, which equals \$3,000 for 2020.

Subd. 3. Seven-day qualifying event. Sets a requirement that benefits can only be paid for a qualifying event of, at least, seven days duration. The seven days need not be sequential. For example, if an otherwise eligible employee breaks their leg, and the injury requires three days of treatment in a hospital, two days recovery at home, and two follow-up visits to a doctor, that would count as a seven-day qualifying event. Leave and benefits for bonding with a child are not subject to this requirement.

Subd. 4. Ineligible. Provides that an applicant is ineligible for benefits for any portion of a day in which the applicant worked for pay or received workers’ compensation benefits or unemployment insurance.

Subd. 5. Certification by health care provider. Requires an application for benefits relating to an applicant’s own serious health condition, care of a relative with a serious health condition, or pregnancy contain a written certification by a qualified health care professional. “Qualified healthcare professional” is defined in the bill as a healthcare professional who, in the judgment of the commissioner of employment and economic development, is qualified to assess the need for the benefits sought. “Healthcare practitioner” is broadly defined and includes physicians, osteopaths, physician assistants, chiropractors (with restrictions), advanced practice registered nurses, registered nurses, optometrists, licensed

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psychologists, licensed independent clinical social workers, dentists, and podiatrists. The definition also includes that those professionals must be licensed and working within their scope of practice.

Subd. 6. Records release. Requires, for an applicant whose medical records are necessary to a determination of benefit eligibility, to provide the Department of Employment and Economic Development and the Department of Labor and Industry a legally effective release for those records. Data collected for the program is classified as private or nonpublic data elsewhere in the bill.

Subd. 7. Self-employed applicant. Sets eligibility requirements for a self-employed individual or independent contractor who has elected coverage under the program and been approved for coverage. The election and approval of coverage are addressed in section 16 of the bill.

8 Applications [§ 268B.04]

Subd. 1. Process; deadline. Requires that all claims for benefits be filed within 90 days of the associated qualifying event, with exceptions for good cause, and that all claims include a certification supporting the right to benefits.

Subd. 2. Certification. Sets requirements for the content of certifications, as required under subdivision 1, for each category of benefits and leave.

9 Determination of application [§ 268B.05]

Requires the commissioner to respond to applications of benefits within two weeks of receipt. The section also requires an applicant whose application is denied to appeal the denial within 30 days, or the determination is final. The commissioner has one year from a determination of benefits to revisit the decision for error or misrepresentation.

10 Employer notification [§ 268B.06]

Provides for content of notification to employer when an employee is granted benefits under the program.

11 Appeal process [§ 268B.07]

The structure created under this section is generally similar to the structure of appeals under the state's unemployment insurance program.

Subd. 1. Hearing. Requires the commissioner of employment and economic development to appoint a chief benefit judge, who, in turn, appoints a benefit judge to conduct a hearing each time an applicant or employer appeals a determination of benefits. This subdivision also allows the commissioner to

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adopt rules for appeals hearings and provides discretion for the commissioner over how those hearings are structured.

Subd. 2. Decision. Requires a benefit judge to send a written decision, including reasons and finding of facts, upon completion of an appeals hearing.

Subd. 3. Request for reconsideration. Allows any party or the commissioner to seek reconsideration of an appeals decision within 30 days of receipt of the decision.

Subd. 4. Appeal to court of appeals. Allows a final decision on a request for reconsideration to be appealed to the Minnesota Court of Appeals.

Subd. 5. Benefit judges. Requires the chief benefit judge and other benefit judges to be attorneys, licensed in Minnesota, and employees of the Department of Employment and Economic Development. This subdivision also grants the power of the chief benefit judge to assign and reassign hearings to benefit judges.

12 **Benefits [§ 268B.08]**

Subd. 1. Weekly benefit amount. Sets the formula for calculating weekly benefit amount under the program. That formula works as follows:

- An applicant's weekly wage is calculated by finding the quarter, out of the prior four completed quarters, in which the applicant earned the most wages and dividing that wage amount by 13.
- An applicant is entitled to a weekly benefit amount equal to (1) 90 percent of their weekly wages that do not exceed 50 percent of the state's average weekly wage (\$1,112 for 2020 and 50 percent is \$556, so the max amount is 90 percent of \$556 which is \$500.40); (2) plus benefits equal to 66 percent of weekly wages above 50 percent (\$556 in 2020) but below 100 percent of the state's average weekly wage (max amount for 2020 is 66 percent of \$556, so \$366.96); (3) plus 55 percent of any weekly wages that exceed 100 percent of the state's average weekly wage (\$1,112 for 2020).
- Weekly benefits are capped at a maximum of the state's average weekly wage (again, \$1,112 for 2020).
- As an example, an applicant earning \$40,000 per year (evenly divided into \$10,000 quarters) has an average weekly wage of \$769.23 (\$10,000 divided by 13). The state's average weekly wage at the time of application is \$1,112 (with 50 percent equal to \$556). So, under the formula, the applicant would be entitled to \$641.13 ($0.9 \times \$556 + 0.66 \times 213.23$).

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Subd. 2. Timing of payment. Requires benefits be paid weekly.

Subd. 3. Maximum length of benefits. Sets maximum amount of benefits an applicant may receive within a 52-week period. Specifically, the subdivision allows up to 12 weeks of benefits for care of a family member with a serious health condition, for a qualifying exigency, for safety leave, or for bonding and up to 12 weeks of benefits for pregnancy or a serious health condition of the applicant.

Subd. 4. Minimum period for which benefits are payable. An applicant must accrue, at least seven days for which they are eligible for benefits before making a claim for benefits. After that, benefits may be paid out in single-day minimum increments.

Subd. 5. Withholding of federal tax. If the I.R.S. finds benefits under the program to be taxable under federal law, and the applicant elects to have those federal taxes withheld, the commissioner of employment and economic development must withhold the tax.

13 Leave [§ 268B.085]

Subd. 1. Right to leave. Provides that an employee, 90 days after date of hire, has a right to leave for any day, or portion of a day, in which the employee would be eligible for benefits under the chapter.

Subd. 2. Notice to employer. Provides for notice to employers about the need for leave, modeled on similar provisions from the federal Family and Medical Leave Act.

Subd. 3. Bonding leave. Provides that bonding leave begins at a time chosen by the employee, but such leave must begin within 12 months of the birth, adoption, or foster care placement of the child. There is an exception for children who must remain in the hospital longer than the child's mother. In that case, the 12-month clock begins when the child leaves the hospital.

Subd. 4. Intermittent leave. Provides that employment leave may be taken on an intermittent or reduced-schedule, modeled on similar language from the federal Family and Medical Leave Act.

14 Employment protections [§ 268B.09]

Subd. 1. Retaliation prohibited. Prohibits retaliation for requesting or obtaining benefits or for exercising any right granted under chapter 268B.

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Subd. 2. Interference prohibited. Prohibits employer interference with an employee application for benefits or with an employee exercising any right under chapter 268B.

Subd. 3. Waiver of rights void. Voids any agreement to waive, or otherwise give up the right to benefits under chapter 268B.

Subd. 4. No assignment of benefits. Voids any assignment of benefits under chapter 268B. This subdivision also exempts benefits from any type of debt collection.

Subd. 5. Continued insurance. Requires employers to continue any insurance or health plan during an employee's leave under the program. Employees continue to be responsible to pay any employee share of such program.

Subd. 6. Reinstatement after leave. Entitles an employee on leave to reinstatement following the leave in a position with equivalent seniority, status, benefits, pay, and other terms and conditions.

Subd. 7. Limitations on reinstatement after leave. An employee on leave is not entitled to better seniority, status, benefits, pay, or other terms and conditions than if the employee had not taken leave. For example, if a continuously employed employee would have been laid off, the employee on leave is not entitled to reinstatement after leave.

Subd. 8. Remedies. Allows a person injured by a violation of section 268B.09 to bring a private lawsuit seeking damages, equitable remedies (such as reinstatement in a job), and attorney fees.

15 **Substitution of other plan; employer exclusion [§ 268B.10]**

Subd. 1. Application for substitution. Allows an employer to apply to the commissioner of employment and economic development to substitute a private plan for either paid family, or paid medical, or both benefit programs under chapter 268B. Any private plan must provide the same rights, protections, and benefits as those conferred under chapter 268B.

Subd. 2. Private plan requirements; medical benefit program. Sets requirements for a private, employer-provided medical benefit program that would allow the employer to substitute the private plan under subdivision 1. A private plan may provide shorter durations of leave and benefit eligibility if the total amount of wage replacement for a qualifying event is the same or better than under the public plan.

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Subd. 3. Employer plan requirements; family benefit program. Sets requirements for a private, employer-provided family benefit program that would allow the employer to substitute the private plan under subdivision 1. A private plan may provide shorter durations of leave and benefit eligibility if the total amount of wage replacement for a qualifying event is the same or better than under the public plan.

Subd. 4. Use of private insurance products. Clarifies that private insurance products may be used in the creation of a private plan.

Subd. 5. Private plan approval and oversight fee. Sets an annual fee for employers utilizing private plans, equal to five percent of the amount of premiums an employer would have been liable for if they had not substituted a private plan.

Subd. 6. Plan duration. Requires that private plans must be in effect for at least one year and continuously thereafter unless the commissioner approves a withdrawal. Employers can withdraw plans within 30 days of the effective date of a law increasing benefits under chapter 268B or a change in premium rates.

Subd. 7. Appeals. Provides that employers may use the appeals process under section 268B.07 to appeal a decision by the commissioner regarding the use of a private plan.

Subd. 8. Employees no longer covered. Provides the condition under which an employee is no longer covered by a private plan (termination of the employment relationship with the private-plan employer) and that such an employee is thereafter covered by the public insurance provisions of chapter 268B.

Subd. 9. Posting of notice regarding private plan. Requires an employer with a private plan to notify affected employees following the requirements of section 268B.22.

Subd. 10. Amendment. Provides the conditions under which the commissioner must approve an amendment to a private plan.

Subd. 11. Successor employer. Provides for private plan continuation and termination when a business acquires an employer with a private plan. The acquiring business has a 90-day window after acquisition to terminate a private plan.

Subd. 12. Revocation of approval by commissioner. Provides that the commissioner may terminate a private plan if certain conditions are met.

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Subd. 13. Employer penalties. Provides penalties that the Department of Labor and Industry may assess if an employer with a private plan violates chapter 268B.

Subd. 14. Reports, information, and records. Requires employers with private plans to keep all records relating to the plan for six years and give them to the commissioner of employment and economic development upon request.

Subd. 15. Audit and investigation. Allows the commissioner to investigate and audit opt-out plans under this section.

16 Self-employed election of coverage [§ 268B.11]

Allows for self-employed people and independent contractors to elect participation in the program. Those electing to participate pay half of the employer premium under the program.

17 Premiums [§ 268B.12]

Subd. 1. Employer. Requires all employers subject to the state’s unemployment insurance statute to pay a yearly premium on employee wages, set in subdivision 4.

Subd. 2. Employee charge back. Allows an employer to charge an employee up to 50 percent of the premiums paid by the employer based on that employee’s wages.

Subd. 3. Wages and payments subject to premium. Sets the maximum earnings on which premiums are assessed at the Social Security wage base. For 2020, that wage base is \$137,700. So, if the law were in effect today, employers and employees would pay the percentage premium set in this section on all earnings up to that amount.

Subd. 4. Annual premium rates. Provides annual percentage rates of premiums.

Subd. 5. Premium rate adjustments. Sets the formula by which annual percentage rates of premiums increase or decrease each year. Under the formula, the commissioner must calculate 1.45 times the amount disbursed under the program during the prior year, ending on September 30. The amount remaining in the program account is subtracted from the resulting sum. The resulting difference is divided by twice the total wages in covered employment (an amount determined currently by the Department of Employment and Economic Development). The resulting quotient is rounded down to the nearest one-hundredth of one percent. The result is the premium rate for the following year unless it would cause the premium to go above the maximum, or fall below the minimum, limits set in subdivision 6.

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Subd. 6. Deposit of premiums. Requires all premiums collected be deposited in the account in the special revenue fund, established under section 268B.02, subdivision 4 (section 6 of this bill).

Subd. 7. Nonpayment of premiums by employer. Clarifies that nonpayment of premiums by an employer do not affect an employee’s right to benefits under chapter 268B.

18 Collection of premiums [§ 268B.13]

Provides for treatment of premiums under chapter 268B, including with the language modeled from analogous sections under the state’s unemployment insurance statutes.

19 Administrative costs [§ 268B.14]

Allows the commissioner of employment and economic development to use up to seven percent of projected benefit payments for a calendar year for the administration of the program in that year and allows interagency agreements with the Department of Labor and Industry for transferring funds for enforcement of the chapter.

20 Public outreach [§ 268B.15]

Requires the commissioner to use at least 0.5 percent of revenue collected under chapter 268B for outreach, education, and technical assistance about the program for employees and employers. At least half of the amount spent must be used for grants to community groups that will conduct the outreach, education, and technical assistance.

21 Applicant’s false representations; concealment of facts; penalty [§ 268B.16]

Sets penalties for applicants who intentionally misrepresent or omit facts in an effort to obtain benefits for which they do not qualify. The language is modeled on analogous language under the state’s unemployment insurance statutes.

22 Employer misconduct; penalty [§ 268B.17]

Sets circumstances and penalties for when an employer colludes with an employee to procure benefits for which the employee was not eligible and for when an employer intentionally misrepresents or omits facts. The language is modeled on analogous language under the state’s unemployment insurance statutes.

23 Records; audits [§ 268B.18]

Requires employers to keep records related to the program that are prescribed by the commissioner. This section also grants the commissioner to conduct audits and

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- investigations of employer, when necessary to administering chapter 268B, and sets penalties for failure to comply with such audits.
- 24 **Subpoenas; oaths [§ 268B.19]**
Grants the commissioner power to administer oaths and issue subpoenas when necessary for the administration of chapter 268B.
- 25 **Conciliation services [§ 268B.20]**
Allows the Department of Labor and Industry to offer conciliation services to help settle disputes that arise under chapter 268B.
- 26 **Annual reports [§ 268B.21]**
Requires the commissioner of employment and economic development to annually report, to the legislative and executive branches, a number of items regarding the operation and finances of the program under chapter 268B.
- 27 **Notice requirements [§ 268B.22]**
Requires employers to post notices, prepared by the commissioner of employment and economic development, regarding rights under chapter 268B. Employers must also provide separate notices to employees and contractors respectively.
- 28 **Relationship to other leave; construction [§ 268B.23]**
 Subd. 1. Concurrent leave. Provides that an employer may require leave taken under chapter 268B run concurrently with leave taken for the same purpose under the federal Family and Medical Leave Act or section 181.941 (Pregnancy and parenting leave).

 Subd. 2. Construction. Clarifies that nothing in chapter 268B is intended (1) to allow an employer to require an employee to exhaust accumulated employer-provided leave before taking leave under chapter 268B, or (2) to prohibit an employer from providing more generous benefits than those required under chapter 268B.
- 29 **Small business assistance grants [§ 268B.24]**
Allows the commissioner to make grants to businesses with 50 or fewer employees to defray the cost of hiring replacement workers for employees on leave.
- 30 **Effective dates.**

Article 2: Family and Medical Leave Benefit as Earnings

Article 2 provides for treatment of benefits under the Minnesota Family Investment Program (MFIP) and other programs.

Section	Description – Article 2: Family and Medical Leave Benefit as Earnings
1	Parents receiving family and medical leave benefits [§ 256J.561] Exempts a parent receiving benefits under chapter 268B and participating in MFIP from the employment plan requirements of MFIP.
2	Eligibility of diversionary work program [§ 256J.95] Exempts single parents receiving benefits under chapter 268B from the diversionary work program requirements of MFIP.
3	Universal participation required [§ 256J.95] Exempts a parent, in a two-parent household, receiving benefits under chapter 268B from the MFIP diversionary work requirement, under certain circumstances.
4	Earned income [§ 256P.01] Defines benefits received under chapter 268B as earned income for the purposes of MFIP, general assistance, housing support services, and several other programs.
5	Effective dates.

Article 3: Appropriations

Article 3 provides general fund appropriations and future bases.

Section	Description – Article 3: Appropriations
1	Family and medical benefits; appropriations. Provides appropriations and base amounts to the Departments of Employment and Economic Development, Labor and Industry, Human Services, Minnesota Management and Budget, and the Supreme Court.



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