

Subject Paid Family and Medical Leave Benefit Insurance Program
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Date January 21, 2019

Article 1: Family and Medical Benefits

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

Section	Description
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.
2	Compliance orders [§ 177.27, subd. 4] Gives enforcement powers over chapter 268B to the Commissioner of Labor and Industry.
3	Relationship to other leave [§ 181.943] Provides that the 12 weeks of unpaid pregnancy and parenting leave under section 181.941 may be taken in addition to any leave under chapter 268B.
4	Exceptions for all employers [§ 268.047, subd. 2] Provides that an employee hired as a replacement worker for an employee on leave under chapter 268B will not affect the employer's "experience rating," used to calculate unemployment insurance taxes.
5	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.
6	Definitions [§ 268B.01] Provides a number of definitions of terms used throughout chapter 268B.
7	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.

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	<p>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.</p> <p>Subd. 3. Rulemaking. Allows the commissioner to adopt rules to implement the program under the normal, note and comment, rulemaking procedures that typically take 18 months to two years.</p> <p>Subd. 4. Account creation; appropriation. Creates an account in the special revenue fund and appropriates all money in the account to the commissioner to pay benefits under and administer the program.</p>
8	<p>Eligibility [§ 268B.03]</p> <p>Subd. 1. Applicant. Specifies that an applicant who meets one of the criteria under the program is eligible for benefits.</p> <p>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 lowest \$100 increment, which equals \$2,900 for 2019.</p> <p>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 her 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.</p> <p>Subd. 4. Ineligible. Provides that an applicant is ineligible for benefits for any day in which the applicant worked for pay.</p> <p>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 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.</p> <p>Subd. 6. Records release. Requires, for an applicant whose medical records are necessary to a determination of benefit eligibility, to provide the department a</p>

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	<p>legally effective release for those records. Data collected for the program is classified as private or nonpublic data elsewhere in the bill.</p> <p>Subd. 7. Self-employed applicant. Sets eligibility requirements for a self-employed individual who has elected coverage under the program. The election of coverage is addressed in section 17 of the bill.</p>
9	<p>Applications [§ 268B.04]</p> <p>Subd. 1. Application forms. Requires the commissioner to create application forms, in paper and electronic format, for each type of leave benefit.</p> <p>Subd. 2. Content. Sets minimum requirements for the commissioner in creating the application forms.</p> <p>Subd. 3. Online access. Requires the commissioner to create, if possible, a system for completing all aspects of an application online.</p> <p>Subd. 4. Administrative efficiencies. Requires the commissioner, if feasible, to use similar processes and procedures to those under the state's unemployment insurance system.</p>
10	<p>Determination of application [§ 268B.05]</p> <p>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.</p>
11	<p>Employer notification [§ 268B.06]</p> <p>Provides for content of notification to employer when an employee is granted benefits under the program.</p>
12	<p>Appeal process [§ 268B.07]</p> <p>This structure created under this section is generally similar to the structure of appeals under the state's unemployment insurance program.</p> <p>Subd. 1. Hearing. Requires the commissioner to appoint a chief benefit judge, who, in turn, is required to appoint a benefit judge each time an applicant or employer appeals a determination of benefits. This subdivision also allows the commissioner to adopt rules for appeals hearings and provides discretion for the commissioner over how those hearings are structured.</p> <p>Subd. 2. Decision. Requires a benefit judge to send a written decision, including reasons and finding of facts, upon completion of an appeals hearing.</p>

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	<p>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.</p> <p>Subd. 4. Appeal to court of appeals. Allows any final decision on a request for reconsideration be appealed to the Minnesota Court of Appeals.</p> <p>Subd. 5. Benefit judges. Requires the chief benefit judge and other benefit judges 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.</p>
13	<p>Benefits [§ 268B.08]</p> <p>Subd. 1. Weekly benefit amount. Sets the formula for calculating weekly benefit amount under the program. That formula works as follows:</p> <ul data-bbox="505 850 1419 1549" style="list-style-type: none">• 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 90 percent of her weekly wages up to 50 percent of the state’s average weekly wage (\$1,076 for 2019), plus benefits equal to 66 percent of weekly wages at 50 to 100 percent of the state’s average weekly wage, plus 55 percent of any weekly wages that exceed 100 percent of the state’s average weekly wage.• Weekly benefits are capped at a maximum of the state’s average weekly wage (again, \$1,076 for 2019).• 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 \$1,076 (with 50 percent equal to \$538). So, under the formula, the applicant would be entitled to \$636.81 ($0.9 \times \\$538 + 0.66 \times 231.23$). <p>Subd. 2. Timing of payment. Requires benefits be paid weekly.</p> <p>Subd. 3. Method of payment. Allows the commissioner to pay benefits by any method authorized under the state’s unemployment insurance statutes.</p> <p>Subd. 4. 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 or for bonding and up to 12 weeks of benefits for pregnancy or a serious health condition of the applicant. In addition, applicants may receive up</p>

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	<p>to 26 weeks of benefits in a 52-week period to care for a covered service member during a qualifying exigency. (“Covered service member” and “qualifying exigency” are both defined in article 1, section 6, of the bill.)</p>
	<p>Subd. 5. 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.</p>
	<p>Subd. 6. Total paid benefits not to exceed average weekly wage. If an applicant for benefits under chapter 268B also receives any employer-paid benefits for the same period, such as paid sick days, short-term disability benefits, or paid parental leave benefits, the applicant’s benefits under chapter 268B must be reduced so that the total amount received by the applicant does not exceed the applicant’s average weekly wage.</p>
	<p>Subd. 7. 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 must withhold the tax.</p>
14	<p>Employment protections [§ 268B.09]</p> <p>Subd. 1. Retaliation prohibited. Prohibits retaliation for requesting or obtaining benefits or for exercising any right granted under chapter 268B.</p> <p>Subd. 2. Interference prohibited. Prohibits employer interference with an employee application for benefits.</p> <p>Subd. 3. Waiver of rights void. Voids any agreement to waive, or otherwise give up the right to benefits under chapter 268B.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>Subd. 7. 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.</p>

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15	<p>Bonding leave [§ 268B.095]</p> <p>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.</p>
16	<p>Substitution of other plan; employer exclusion [§ 268B.10]</p> <p>Subd. 1. Application for exclusion. Allows an employer to apply to opt out of either, or both, the family and medical benefit programs under chapter 268B. In order to opt out, a majority of affected employees must certify in writing that they want their employer to opt out, and the commissioner must approve the application. Employers and employees of entities that opt out pay a reduced tax rate under section 268.12, subdivision 4 (section 18 of the bill).</p> <p>Subd. 2. Employer plan requirements; medical benefit program. Sets minimum requirements for an employer-provided medical benefit program that would allow the employer to opt out under subdivision 1.</p> <p>Subd. 3. Employer plan requirements; family benefit program. Sets minimum requirements for an employer-provided family benefit program that would allow the employer to opt out under subdivision 1.</p> <p>Subd. 4. Audit and investigation. Allows the commissioner to investigate and audit opt-out plans under this section.</p>
17	<p>Self-employed election of coverage [§ 268B.11]</p> <p>Allows for self-employed people to elect participation in the program using a method prescribed by the commissioner. Those electing to participate pay both the employer and employee taxes for the program.</p>
18	<p>Premiums [§ 268B.12]</p> <p>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. Covered business entities, which are defined in section 268B.01, subdivision 7, must pay the premium on self-employed workers whose income is required reported on I.R.S. form 1099-MISC.</p> <p>Subd. 2. Employee. Requires employees on whose wages a premium is paid also annually pay an equal amount as a premium. This subdivision also requires employers deduct the premiums from employee paychecks and submit them on the employees' behalf.</p> <p>Subd. 3. Wages and payments subject to premium. Sets the maximum earnings on which premiums are assessed at the Social Security wage base. For 2019, that wage base is \$132,900. So, if the law were in effect today, employers and</p>

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	<p>employees would pay the percentage premium set in this section on all earnings up to that amount.</p> <p>Subd. 4. Annual premium rates. Provides annual percentage rates of premiums. The rates are not yet specified in the bill.</p> <p>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-tenth of one percent. The result is the premium rate for the following year unless it represents an increase or decrease of more than one-tenth of one percent. In that case the current rate is increased or decreased by one percent, and that is the premium rate for the following year. The adjustments in this subdivision, however, must not cause the premium to go above the maximum, or fall below the minimum, limits set in subdivision 6.</p> <p>Subd. 6. Premium rate limits. Sets a maximum and minimum percentage rate for premiums, as yet unspecified in the bill.</p> <p>Subd. 7. Collection of premiums; efficiencies. Requires the commissioner to use, to the extent possible, the same collection methods as those used to collect state unemployment insurance taxes.</p> <p>Subd. 8. 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 7 of this bill).</p>
19	<p>Collection of premiums [§ 268B.13]</p> <p>Provides for treatment of premiums under chapter 268B, including with the language modeled from analogous sections under the state’s unemployment insurance statutes.</p>
20	<p>Administrative costs [§ 268B.14]</p> <p>Allows the commissioner to use up to seven percent of projected benefit payments for a calendar year for the administration of the program in that year.</p>
21	<p>Public outreach [§ 268B.15]</p> <p>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</p>

Section	Description
	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.
22	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.
23	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.
24	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 investigations of employer, when necessary to administering chapter 268B, and sets penalties for failure to comply with such audits.
25	Subpoenas; oaths [§ 268B.19] Grants the commissioner power to administer oaths and issue subpoenas when necessary for the administration of chapter 268B.
26	Mediation and conciliation [§ 268B.20] Requires the Department of Employment and Economic Development to offer mediation services to settle disputes that arise under chapter 268B.
27	Benefits under chapter 268B [§ 290.0132] Classifies benefits under chapter 268B as a subtraction for state income tax purposes. This means benefits would not be subject to income tax at the state level.
28	Effective date

Article 2: Temporary Provisions and Appropriations

Article 2 provides general fund appropriations and creates a pilot program.

Section	Description
1	Appropriation Appropriates yet unspecified amounts for the program in fiscal years 2020 and 2021; provides a yet unspecified base for fiscal year 2022; and provides that the base for fiscal years 2023 and beyond is zero dollars.
2	Child care benefits pilot program; appropriation Creates a two-year pilot program for child care loss benefits in which employees in areas of the state with extreme childcare shortages and who need leave from employment based on a loss of childcare would be eligible for benefits as under chapter 268B.
3	Effective date

Article 3: Family and Medical Leave Benefit As Earnings

Article 3 provides for treatment of benefits under the Minnesota Family Investment Program (MFIP) and other programs.

Section	Description
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.



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