

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 Government 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. Authorizes the commissioner to issues orders to comply.
- 3 Required statement of earnings by employer [§ 181.032]**

Requires that employers include the amount charged back to employees and deducted from their paychecks for premiums under section 268B.14, subdivision 3, and the amount paid by employers as premiums, be included on employee statement of earnings, which must be kept for review for three years.
- 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. Several definitions model Minnesota’s unemployment insurance statute.
- 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.

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Subd. 2. Creation of division. Creates the Family and Medical Benefits Insurance 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.

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 the family and medical benefit insurance 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, including outreach.

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 Payment of benefits [§ 268B.03]

Subd. 1. Requirements. Provides applicant requirements for payment of family and medical leave benefits, including: (1) file an application and establish a benefit account; (2) meet all ongoing eligibility requirements; (3) have no outstanding overpayment; (4) not found to be ineligible; and (5) have wage credits during the base year with an employer covered by chapter 268B.

Subd. 2. Benefits paid from state funds. Specifies that family and medical leave benefits are paid from state funds out of the family and medical insurance account and gives the commissioner of employment and economic development responsibility for making proper payments.

8 Benefit account; benefits [§ 268B.04]

Subd. 1. Application for benefits; determination of benefit account. Models state's unemployment insurance benefit account determination. Requires the commissioner of employment and economic development to determine an eligible applicant's weekly and maximum benefit amount based on their benefit year and wage information. Requires certification supporting leave request. Provides process and timeline for amended determination.

Subd. 2. Benefit account requirements. Requires an applicant to have earned at least 5.3 percent of the state's average annual wage rounded to the next lower \$100 increment (\$3,100 for 2021) in covered employment in their base period (the most recent four quarters, or as provided in section 268B.01, subdivision 5). Provides requirements for establishing a new benefit account after expiration.

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Subd. 3. Weekly benefit amount; maximum amount of benefits available; prorated 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 (\$1,144 for 2021 and 50 percent is \$572, so the max amount is 90 percent of \$572 which is \$514.80); (2) plus benefits equal to 66 percent of weekly wages above 50 percent (\$572 in 2021) but below 100 percent of the state's average weekly wage (max amount for 2021 is 66 percent of \$572, so \$377.52); (3) plus 55 percent of any weekly wages that exceed 100 percent of the state's average weekly wage (\$1,144 for 2021).
- Weekly benefits are capped at a maximum of the state's average weekly wage (again, \$1,144 for 2021).
- 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 \$1,144 (with 50 percent equal to \$572). So, under the formula, the applicant would be entitled to \$644.97 ($0.9 \times \$572 + 0.66 \times 197.23$).
- Provides for prorated weekly benefit amounts for hourly workers or employees who use sick leave, paid time off, or other paid time off.

Subd. 4. Timing of payment. Requires benefits be paid weekly.

Subd. 5. Maximum length of benefits. Sets maximum duration an applicant may receive benefits in their 52-week benefit year. Allows up to 12 weeks of benefits to care for 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 an applicant's own pregnancy or a serious health condition.

Subd. 6. Minimum period for which benefits are payable. Except for bonding leave, 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 for a minimum duration of eight hours in a week.

Subd. 7. Right of appeal. Provides for appeal process for benefit account determinations or amended determinations.

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Subd. 8. Limitations on applications and benefit accounts. Provides timing for the effective date, withdrawal, or expiration of a benefit account. An application is effective the Sunday of the week it is filed, unless backdated.

9 **Continued request for benefits [§ 268B.05]**

Requires applicants to certify each week they are unable to work due to a qualifying event and meet ongoing eligibility requirements.

10 **Eligibility requirements; payments that affect benefits [§ 268B.06]**

Subd. 1. Eligibility conditions. Specifies that an applicant who meets criteria under the program is eligible for benefits. An applicant must: (1) file continued request for benefits; (2) request benefits for week in the applicant's benefit year; (3) be unable to work due to a family member's serious health condition, a qualifying exigency, safety leave, bonding leave, or applicant's own pregnancy, pregnancy recovery, or serious health condition for the time required under subdivision 2; (4) have earned enough money through covered employment in the prior four completed quarters to establish a benefit account (\$3,100 for 2021, other than a self-employed applicant); and (5) submit certification supporting request for benefits under subdivision 3.

Subd. 2. 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. Provides for rulemaking to determine what serious health conditions and events qualify.

Subd. 3. Certification. Requires certification for a request for benefits. Sets certification requirements for each type of leave, including health provider review and signature for leaves other than safety or exigency leave.

Subd. 4. Not eligible. Provides that an applicant is ineligible for benefits for any portion of a week before their benefit account becomes effective or if the applicant has an overpayment balance, fails to provide information on ineligibility, or worked for pay.

Subd. 5. Vacation, sick leave, and supplemental benefit payments. Provides an applicant cannot receive benefits for any portion of a week they are receiving vacation, sick, or personal leave. Does not apply to supplemental benefit payments, which an employer provides as salary continuation or as paid time off to supplement family and medical leave benefits the employee is receiving.

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Subds. 6 to 8. Offsets. Provides that an applicant is ineligible for benefits for any portion of a week the applicant is receiving workers' compensation benefits or separation, severance, or bonus payments as wages. Also provides a 50 percent deduction from benefits for an applicant who has received, is receiving, or has filed for Social Security disability benefits for a period of time other than their entire base period of employment.

11 Determination on issues of eligibility [§ 268B.07]

Provides for content of notification to employer when an employee is granted benefits under the program. Requires commissioner to provide notice within two weeks. A determination or amended determination is final unless an appeal is filed within 20 days. The commissioner has four years to revisit a determination of eligibility for misrepresentation.

12 Appeal process [§ 268B.08]

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 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. Also grants the chief benefit judge power to assign and reassign hearings to benefit judges.

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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. Requires 30-day notice to employer for foreseeable leave. An employer may require certification of need for leave under section 268B.06, subdivision 3.

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.

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.

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. Employee right to reinstatement after leave. Entitles an employee on leave to reinstatement following the leave in a position with equivalent seniority, status, benefits, pay, duties, responsibilities, and other terms and conditions.

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Subd. 7. Limitations on reinstatement after leave. An employee on leave is not entitled to better seniority, status, benefits, pay, duties, responsibilities, 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 [§ 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. Generally requires a private plan to meet the rights, protections, and benefits provided under chapter 268B. 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. 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. Generally requires a private plan to meet or exceed the rights, protections, and benefits provided under chapter 268B. 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 oversight fee for employers utilizing approved private plans, based on the employer's number of employees.

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

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a law increasing benefits under chapter 268B or a change in premium rates. If the plan is not withdrawn it must be amended to meet the new requirements.

Subd. 7. Appeals. Provides that employers may use the appeals process under section 268B.08 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 or approval for the private plan ends) and that such an employee is thereafter immediately 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.26.

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. Gives acquiring business 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.

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. Requires net earnings of at least \$10,000 in the previous two taxable years. Those electing to participate pay half of the employer premium under the program and must elect to participate for a minimum of two years. A self-employed applicant's weekly wage is calculated based on their premium base (the lesser of \$142,800 for 2021 or estimated self-employment income and wages for the year).

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17 Wage reporting [§ 268B.12]

Requires employers to submit wage detail reports electronically each quarter listing certain information for each employee, including total wages paid and hours worked. Provides for late fees and administrative service fees if information is missing or inaccurate.

18 Employer premium accounts [§ 268B.13]

Establishes employer premium accounts with the commissioner of employment and economic development to pay family and medical benefit program premiums assessed under section 268B.14.

19 Premiums [§ 268B.14]

Subd. 1. Payments. Requires all employers to pay a yearly premium on employee taxable wages, set in subdivision 4. Premiums are paid quarterly into the family and medical benefit insurance account and calculated based on the wage detail report submitted under section 268B.12.

Subd. 2. Payments by electronic payment required. Requires employers to pay premiums electronically.

Subd. 3. Employee charge back. Allows an employer to deduct up to 50 percent of the premiums paid by the employer from employee wages.

Subd. 4. Wages and payments subject to premium. Sets the maximum earnings or taxable wages on which premiums are assessed at the Social Security wage base (\$142,800 for 2021). Employers and employees pay the percentage premium set under this section on all earnings up to that amount. For example, 0.6 percent of \$142,800 or up to \$856.80 per employee for an employer participating in both family and medical benefits programs under this chapter.

Subd. 5. Annual premium rates. Provides initial annual percentage rates of premiums from January 1, 2023, through December 31, 2025.

Subd. 6. Premium rate adjustments. Sets the formula by which annual percentage rates of premiums increase or decrease each year starting January 1, 2026. 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.

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Subd. 7. Deposit of premiums. Requires all premiums collected be deposited in the family and medical benefit insurance account in the special revenue fund, established under section 268B.02, subdivision 4 (section 6 of this bill).

Subd. 8. Nonpayment of premiums by employer. Clarifies that nonpayment of premiums by an employer does not affect an employee’s right to benefits under chapter 268B.

20 Income tax withholding [§ 268B.145]

If the IRS 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.

21 Collection of premiums [§ 268B.15]

Provides for treatment of premiums under chapter 268B, with language modeled from analogous sections under the state’s unemployment insurance statute. Provides priority for how employer payments are applied. Allows for interest on past due amounts and judgments and credits or refunds for incorrect amounts assessed.

22 Child support deduction from benefits [268B.155]

Requires the commissioner of employment and economic development to deduct child support owed from an applicant’s leave amount to pay the child support agency. Related costs are paid by the child support agency.

23 Compromise [268B.16]

Allows commissioner to compromise a premium or reimbursement due from an employer at any time, if it is in the state’s best interest. Requires a compromise of more than \$10,000 to be approved by an attorney licensed in Minnesota, and employed by the Department of Employment and Economic Development.

24 Administrative costs [§ 268B.17]

Allows the commissioner of employment and economic development to use up to seven percent of projected benefit payments for a calendar year to administer the program in that year and allows interagency agreements with the Department of Labor and Industry for transferring funds for enforcement of chapter 268B.

25 Public outreach [§ 268B.18]

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. Allows interagency agreements with the Department of Labor and Industry for transferring funds for this purpose. At least half of the

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- amount spent must be used for grants to community groups that will conduct the outreach, education, and technical assistance.
- 26 **Benefit overpayments [268B.185]**
Requires an applicant to repay overpaid benefits under chapter 268B, based on a determination or amended determination or a benefit law judge’s decision. Provides for penalties and interest (after 30 days of nonpayment) for overpayments due to an applicant’s intentional misrepresentation or omission to obtain benefits. Penalties or interest collected under this section are deposited into the family and medical leave enforcement account to be used for administering and enforcing this chapter. Provides for offset against future benefits for overpayments due to reasons other than misrepresentation and gives the commissioner of employment and economic development discretion in pursuing recovery of these amounts. Requires cancellation of unpaid overpayments after six to ten years.
- 27 **Applicant administrative penalties [§ 268B.19]**
Sets administrative penalty of being ineligible for benefits for up to two years for applicants who intentionally misrepresent or omit facts in an effort to obtain benefits for which they do not qualify. Modeled on analogous language under the state’s unemployment insurance statutes.
- 28 **Employer misconduct; penalty [§ 268B.20]**
Sets circumstances and penalties for when an employer colludes with an employee to obtain benefits for which the employee was not eligible and for when an employer intentionally misrepresents or omits facts. Modeled on analogous language under the state’s unemployment insurance statutes.
- 29 **Records; audits [§ 268B.21]**
Requires employers to keep records related to the program that are prescribed by the commissioner of employment and economic development for a period of at least four years. This section also grants the commissioner power to conduct audits and investigations of employers, when necessary to administering chapter 268B, and sets penalties for failure to comply with such audits or requests for information.
- 30 **Subpoenas; oaths [§ 268B.22]**
Grants the commissioner or benefit judge power to administer oaths, take depositions, certify official acts, and issue subpoenas when necessary for the administration of chapter 268B.
- 31 **Lien; levy; setoff; and civil action [§ 268B.23]**
Provides that amounts due from an employer or applicant under chapter 268B may become a lien or level on property and requires setoff to the commissioner of

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- employment and economic development for unpaid liability. Provides for a private civil action to collect amounts due under this chapter. Modeled on analogous language under the state’s unemployment insurance statutes.
- 32 **Conciliation services [§ 268B.24]**
Allows the Department of Labor and Industry to offer conciliation services to help settle disputes that arise under chapter 268B.
- 33 **Annual reports [§ 268B.25]**
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.
- 34 **Notice requirements [§ 268B.26]**
Requires employers to post notices, prepared by the commissioner of employment and economic development, regarding rights and benefits under chapter 268B. Also requires employers to provide separate written notices about this chapter to individual employees and contractors respectively.
- 35 **Relationship to other leave; construction [§ 268B.27]**
 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 sick, vacation, or personal leave before taking leave under this chapter, or (2) to prohibit an employer or parties to a collective bargaining agreement from providing more generous benefits than those required under chapter 268B.
- 36 **Severable [§ 268B.28]**
Clarifies that if a provision or part of a provision under chapter 268B is found to be inconsistent with federal law, it has no effect, but any remaining portion of the provision may remain in effect.
- 37 **Small business assistance grants [§ 268B.29]**
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.
- 38 **Revisor instruction.**
- 39 **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, subd. 4] Exempts a parent receiving benefits under chapter 268B and participating in MFIP from the employment services requirements of MFIP. |
| 2 | Eligibility for diversionary work program [§ 256J.95, subd. 3] Exempts single parents receiving benefits under chapter 268B from the diversionary work program requirements of MFIP. |
| 3 | Universal participation required [§ 256J.95, subd. 11] 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, subd. 3] 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. This article is effective July 1, 2024. |

Article 3: Appropriations

Article 3 provides general fund appropriations and future bases.

| Section | Description – Article 3: Appropriations |
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| 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, Legislative Coordinating Commission, the Supreme Court, and the Court of Appeals. |
| 2 | Family and medical benefits; transfer. Provides onetime transfer from the paid family medical leave account to the general fund. |



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