

S.F. No. 2 – PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM (6th engrossment)

Author: Senator Alice Mann

Prepared by: Carlon Doyle Fontaine, Senate Counsel (651/296-4395)

Date: February 27, 2023

ARTICLE 1 FAMILY AND MEDICAL BENEFITS

Section 1. **Family and medical insurance data.** [§ 13.719, subd. 7] Classifies data under chapter 268B as private or nonpublic data. Allows sharing of the data between the Department of Employment and Economic Development (DEED) and the Department of Labor and Industry (DLI).

Section 2. **Compliance orders.** [§ 177.27, subd. 4] Gives enforcement powers over the specified sections of chapter 268B to the commissioner of labor and industry.

Section 3. **Required statement of earnings by employer; notice to employee.** [§ 181.032] Requires employers to include the amount charged back to employees and deducted from their paychecks for premiums, and the amount paid by employers as premiums, be included on employee statement of earnings.

Section 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 DEED to administer chapter 268B.

Section 5. **Definitions.** [§ 268B.01] Provides definitions of terms used in chapter 268B.

Section 6. **Family and Medical Benefit Insurance Program creation.** [§ 268B.02] Creates the family and medical benefit insurance program and creates a division within DEED to administer and operate the program. Requires the commissioner to conduct rulemaking, but allows the commissioner to use the expedited rulemaking process. Creates a family and medical benefit insurance account in the state treasury. Appropriates money in the account to the commissioner to pay benefits and administer chapter 268B.

Section 7. **Payment of benefits.** [§ 268B.03] Requires the commissioner to pay benefits to an applicant when certain requirements are met including: (1) filing of an application and establishment of a benefit account; (2) meeting of all ongoing eligibility requirements; (3) having no outstanding overpayment; (4) not found to be ineligible; and (5) having wage credits during the base year with an employer covered by chapter 268B. Specifies that benefits are paid from state funds and not considered a special insurance plan or paid by an employer.

Section 8. **Benefit account; benefits.** [§ 268B.04] Subdivision 1. **Application for benefits; determination of benefit account.** Requires the commissioner to determine an eligible applicant's weekly and maximum benefit amount based on their benefit year and wage information. Provides process and timeline for amended determination.

Subdivision 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 in covered employment in their base period. Provides requirements for establishing a new benefit account after expiration.

Subdivision 3. **Weekly benefit amount; maximum amount of benefits available; prorated amount.** Sets the formula for calculating weekly benefit amount under the program.

Subdivision 4. **Timing of payment.** Requires benefits be paid weekly.

Subdivision 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 serious health condition.

Subdivision 6. **Minimum period for which benefits are payable.** Provides that 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.

Subdivision 7. **Right of appeal.** Provides for appeal process for benefit account determinations or amended determinations. An applicant has 60 days to appeal.

Subdivision 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.

Section 9. **Notification of changed circumstances.** [§ 268B.05] Requires an applicant to promptly notify the department of changes that may affect eligibility.

Section 10. **Eligibility requirements; payments that affect benefits.** Subdivision 1. **Eligibility conditions.** Specifies that an applicant who meets criteria under the program is eligible for benefits of any week in which the applicant: (1) requests benefits for week in the applicant's benefit year; (2) is 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; (3) has earned enough money through covered employment in the prior four completed quarters to establish a benefit account; and (4) submits certification supporting request for benefits under subdivision 3.

Subdivision. 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. Leave and benefits for bonding are not subject to this requirement. Provides for rulemaking to determine what serious health conditions and events qualify.

Subdivision 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

Subdivision 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.

Subdivision 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.

Subdivisions 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 circumstances when a deduction from benefits for an applicant who has received, is receiving, or has filed for Social Security disability benefits would occur and exceptions to ineligibility.

Section 11. **Determination of issues of eligibility.** [§ 268B.07] Provides for content of notification to employer when an employee is granted benefits under the program. Requires the commissioner to provide notice within two weeks. Requires the commissioner to permit an employer to submit relevant information. A determination or amended determination is final unless an applicant or employer files an appeal within 60 days.

Section 12. **Appeal process.** [§ 268B.08] Subdivision 1. **Hearing.** Requires the commissioner to appoint a chief benefit judge who will appoint a benefit judge to conduct a hearing each time an applicant or employer appeals a determination of benefits. Allows the commissioner to adopt rules for appeals hearings.

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

Subdivision 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.

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

Subdivision 5. **Benefit judges.** Specifies who may serve as a benefit judge.

Section 13. **Leave.** [§ 268B.085] Subdivision 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, on which the employee has been deemed eligible for benefits under the chapter.

Subdivision 2. **Notice to employer.** Provides for notice to employers about the need for leave. Requires 30-day notice to employer for foreseeable leave, or if not practicable because of the circumstances, as soon as practicable.

Subdivision 3. **Bonding leave.** Provides that bonding leave begins at a time chosen by the employee, but 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.

Subdivision 4. **Intermittent or reduced-leave schedule.** Provides that leave may be taken on an intermittent or reduced-schedule basis if reasonable and appropriate to the needs of the individual's health condition.

Section 14. **Employment protections.** [§ 268B.09] Subdivision 1. **Retaliation prohibited.** Prohibits discharge, discipline, penalization, interference with, threatening, restrain, coercion, retaliation, or discrimination for requesting or obtaining benefits or for exercising any right granted under chapter 268B. Allows the commissioner of labor and industry to issue a penalty of between \$1,000 and \$10,000, payable to the aggrieved per violation of this subdivision.

Subdivision 2. **Interference prohibited.** Prohibits employer interference with an employee application for benefits or with an employee exercising any right under chapter 268B. Allows the commissioner of labor and industry to issue a penalty of between \$1,000 and \$10,000, payable to the aggrieved per violation of this subdivision.

Subdivision 3. **Waiver of rights as condition of employment prohibited.** Prohibits an employer from requiring as a condition of employment that an employee waive or limit rights or benefits under chapter 253B.

Subdivision 4. **No assignment of benefits.** Voids any assignment of benefits.

Subdivision 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.

Subdivision 6. **Employee right to reinstatement.** 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.

Subdivision 7. **Limitations on an employee's right to reinstatement.** Provides that 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.

Subdivision 8. **Remedies.** Allows an employee injured by a violation of this section to bring a civil action seeking damages, interest, liquidated damages, injunctive or other equitable relief remedies, attorney fees, and reimbursement for other reasonable costs. Provides an employee the right to a jury trial.

Section 15. **Substitution of a private plan.** [§ 268B.10] Subdivision 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. Requires any private plan to provide the same rights, protections, and benefits as those under chapter 268B.

Subdivision 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. Allows a private plan may provider 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.

Subdivision 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.

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

Subdivision 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. Requires the commissioner of employment and economic development to review the adequacy of the fee as part of the annual report required under section 268B.24.

Subdivision 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. If the plan is not withdrawn it must be amended to meet the new requirements.

Subdivision 7. **Appeals.** Provides that employers may appeal a decision by the commissioner regarding the use of a private plan.

Subdivision 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) and specifies that the employee is then immediately entitled to the benefits provided under chapter 268B.

Subdivision 9. **Posting of notice regarding private plan.** Requires an employer with a private plan to notify affected employees.

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

Subdivision 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.

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

Subdivision 13. **Employer penalties.** Provides penalties that DEED may assess if an employer with a private plan violates chapter 268B.

Subdivision 14. **Reports, information, and records.** Requires employers with private plans to keep all records relating to the plan for six years and provide them to the commissioner upon request.

Subdivision 15. **Audit and investigation.** Allows the commissioner to investigate and audit opt-out plans.

Section 16. **Self-employed and independent contractor election of coverage.** [§ 268B.11] Allows for self-employed individuals 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.

Section 17. **Wage reporting.** [§ 268B.12] Requires each employer to submit electronically a quarterly wage detail report including for each employee in covered employment during the calendar quarter, the employee's name, the total wages paid to the employee, total number of paid hours worked, number of employees, and other information as prescribed by the commissioner.

Section 18. **Employer premium accounts.** [§ 268B.13] Requires the commissioner to maintain premium accounts for each employer, assess the premium accounts, and credit the family and medical benefit insurance account with all premiums paid.

Section 19. **Premiums.** [§ 268B.14] Requires all employers to pay a yearly premium on employee taxable wages. Premiums are paid quarterly into the family and medical benefit insurance account and calculated based on the wage detail report and submitted electronically. Allows an employer to deduct up to 50 percent of the premiums paid by the employer from employee wages (employee charge back). Creates an exception to allowable employee charge backs by prohibiting employers of direct care workers from deducting any amount of the premiums paid from the wages of direct care workers. Provides initial annual percentage rates of premiums from January 1, 2025, through December 31, 2025. Sets the formula by which annual percentage rates of premiums increase or decrease each year starting January 1, 2026. Caps the annual premium increase at 1.2 percent of taxable wages paid to each employee.

Section 20. **Income tax withholding.** [§ 268B.145] Provides that 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.

Section 21. **Collection of premiums.** [§268B.15] Specifies that any amount due from an employer is presumed to be correctly determined and assessed, and the burden is upon the employer to show its incorrectness. 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.

Section 22. **Child support deduction from benefits.** [§268B.155] Requires the commissioner to deduct child support owed from an applicant's leave amount to pay the child support agency.

Section 23. **Compromise.** [§ 268B.16] Allows the commissioner to compromise a premium or reimbursement due from an employer 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 DEED.

Section 24. **Administrative costs.** [§ 268B.17] Allows the commissioner to use up to seven percent of projected benefit payments for administration. Allows interagency agreements with the Department of Labor and Industry to transfer funds for enforcement.

Section 25. **Public outreach.** [§ 268B.18] Requires the commissioner to use at least 0.5 percent of projected benefit payments for outreach, education, and technical assistance about the program for employees and employers. Allows interagency agreements with the Department of Labor and Industry to transfer funds for outreach.

Section 26. **Benefit overpayments.** [268B.185] Requires an applicant to repay overpaid benefits based on a determination or amended determination or a benefit law judge's decision. Provides that an applicant has committed misrepresentation if the applicant is overpaid benefits by making an intentional false statement or representation in an effort to fraudulently collect 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. Allows an offset against future benefits for overpayments due to reasons other than misrepresentation and gives the commissioner discretion in pursuing recovery of these overpayments. Requires cancellation of unpaid overpayments after three years.

Section 27. **Employer misconduct; penalty.** [§ 268B.19] Allows the commissioner to penalize an employer in instances 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.

Section 28. **Records; audits.** [§ 268B.21] Requires employers to keep records with information related to the program for at least four years. Grants the commissioner power to conduct audits and investigations of employers and sets penalties for failure to comply.

Section 29. **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.

Section 30. **Lien; levy; setoff; and civil action.** [§ 268B.23] Provides that amounts due from an employer or applicant may become a lien or level on property and requires setoff to the commissioner of employment and economic development for unpaid liability. Allows private civil actions.

Section 31. **Conciliation services.** [§ 268B.24] Allows the Department of Labor and Industry to offer conciliation services to help settle disputes arising under chapter 268B.

Section 32. **Annual reports.** [§ 268B.25] Requires the commissioner of DEED to report annually to the legislative and executive branches regarding the operation and finances of the program.

Section 33. **Notice requirements.** [§ 268B.26] Requires employers to post notices regarding rights and benefits under chapter 268B. Additionally, requires employers to provide separate written notices about this chapter to individual employees and contractors. Provides penalties for a violation of the notice requirements.

Section 34. **Relationship to other leave; construction.** [§ 268B.27] Allows an employer to require leave taken under chapter 268B to 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).

Section 35. **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.

Section 36. **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.

Section 37. **Rates for employers of direct care workers.** Requires the commissioner of human services to increase the medical assistance reimbursement rates for services provided by direct care workers by an amount sufficient to cover the entire cost of premiums paid by the employer on the wages of direct care workers.

Section 38. **Appropriations.** Appropriates \$1.7 billion from the general fund to the Department of Employment and Economic Development for the purposes of chapter 268B, including payment of paid family medical leave benefits, implementation and administration of the program, staffing and technological implementation, and outreach and education for employees, employers, and self-employed. Provide a blank appropriation from the family and medical insurance benefit account to the commissioner for the purposes of chapter 268B and for outreach. Sets a blank base appropriation for the program for fiscal years 2028 and beyond.

Section 39. **Application.** Specifies that family and medical benefits under chapter 268B, may be applied for and paid starting July 1, 2025.

ARTICLE 2 FAMILY AND MEDICAL LEAVE BENEFIT AS EARNINGS

Section 1. **Employed persons with disabilities.** [§ 256B.057, subd. 9]. Modifies the medical assistance eligibility requirements for employed people with disabilities by allowing them to maintain medical assistance edibility during any time the person is receiving either an unemployment benefit or a family and medical leave benefits.

Section 2. **Parents receiving family and medical leave benefits.** [§ 256J.561, subd. 4] Exempts a parent receiving benefits under chapter 268B and participating in the Minnesota Family Investment Program (MFIP) from the employment services requirements of MFIP.

Section 3. **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.

Section 4. **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.

Section 5. **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.

Section 6. **Effective dates.** Provides an effective date of January 1, 2024, for this article.

ARTICLE 3
FAMILY AND MEDICAL LEAVE ACTUARIAL STUDY

Section 1. **Actuarial study requirement.** Requires the commission of employment and economic development to contract with an independent third party to determine the financial soundness of the family and medical benefit insurance program to be completed no later than October 31, 2023.