

Chapter 59 – PAID FAMILY AND MEDICAL LEAVE INSURANCE PROGRAM

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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: (1) the Department of Labor and Industry (DLI); and (2) the Department of Commerce.

Section 2. **Definition; policy of accident and sickness insurance.** [§ 62A.01, subd. 1] Allows insurance carriers to offer paid family and medical leave insurance products.

Section 3. **Compliance orders.** [§ 177.27, subd. 4] Gives enforcement powers over the specified sections of chapter 268B to the commissioner of labor and industry.

Section 4. **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 5. **Personal care assistance choice option; generally.** [§ 256B.0659, subd. 18] Makes PCA choice provider agencies responsible for payroll-related premiums for family and medical insurance.

Section 6. **Budget model.** [256B.85, subd. 13] Clarifies how family and medical benefits insurance premium payments are managed under the CFSS budget model.

Section 7. **Financial management services.** [256B.85, subd. 13a] Requires financial management service providers to provide assistance in obtaining and filing for family and medical benefits insurance under the CFSS program.

Section 8. **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 9. **Definitions.** [§ 268B.01] Provides definitions of terms used in chapter 268B.

Section 10. **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 11. **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 12. **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.

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 number of 20 weeks that an applicant may receive benefits in their 52-week benefit year. For a serious health condition, allows the applicant to take the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the applicant received benefits for bonding, safety leave, family care, or qualifying exigency plus eight weeks. For bonding, safety leave, family care, or qualifying exigency allows the lesser of 12 weeks, or 12 weeks minus the number of weeks within the same benefit year that the applicant received benefits for a serious health condition plus eight weeks.

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. Provides for a minimum duration to receive benefits of one work day in a work 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 13. **Notification of changed circumstances.** [§ 268B.05] Requires an applicant to promptly notify the department of changes that may affect eligibility.

Section 14. **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 serious health condition, a qualifying exigency, safety leave, bonding leave, or family care; (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. Requires the seven days to be consecutive unless the leave is intermittent. 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.

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, paid time off, and disability insurance payments.** Allows an applicant to use vacation, sick leave, paid time off, or disability insurance in lieu of family or medical leave benefits provided the employee is concurrently eligible.

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.

Subdivision 9. **Seasonal employment denial.** Specifies that an applicant is not eligible for benefits to take leave under the program for any week that they meet the definition of "seasonal employee."

Section 15. **Determination of issues of eligibility.** [§ 268B.07] Provides for content of notification to an 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 16. **Appeal process.** [§ 268B.08] Subdivision 1. **Hearing.** Requires the commissioner to appoint a chief hearing officer who will appoint a hearing officer 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 hearing officer 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.

Section 17. **Notice to employer; schedules.** [§ 268B.085] Subdivision 1. **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 2. **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 3. **Intermittent schedule.** Provides that leave may be taken on an intermittent basis if reasonable and appropriate to the needs of the individual's health condition.

Section 18. **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 void.** Voids any agreement to waive the right to benefits under chapter 268B, except for voluntary settlement or valid separation agreement. Clarifies waiver rights available.

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. Provides that 90 days from the date of hire an employee has the right to reinstatement.

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 19. **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 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 3. **Private 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. **Surety bond requirement.** Requires that self-insured private plans include the filing of an approved surety bond.

Subdivision 5. **Private plan requirements; timing of payment.** Allows private plan benefits to be paid on the employer's payroll cycle or according to an approved private plan.

Subdivision 6. **Private plan requirements; weekly benefit determination.** Provides under a private plan, that the weekly benefit amount and duration be based on the employee's typical work week and wages earned with the employer at the time of an application for benefits. Allows an employer to accept an employee's certification of wage credits, based on the employee's records for an incomplete base period.

Subdivision 7. **Use of private insurance products.** Clarifies that private insurance products may be used in the creation of a private plan.

Subdivision 8. **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 9. **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 10. **Employer reimbursement.** Entitles an employer to be reimbursed by the carrier or third-party administrator under certain circumstances for advance payments of benefits made to an employee.

Subdivision 11. **Appeals.** Provides that employers may appeal a decision by the commissioner regarding the use of a private plan.

Subdivision 12. **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 13. **Posting of notice regarding private plan.** Requires an employer with a private plan to notify affected employees.

Subdivision 14. **Amendment.** Provides the conditions under which the commissioner must approve an amendment to a private plan.

Subdivision 15. **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 16. **Revocation of approval by commissioner.** Provides that the commissioner may terminate a private plan if certain conditions are met.

Subdivision 17. **Employer penalties.** Provides penalties that DEED may assess if an employer with a private plan violates chapter 268B.

Subdivision 18. **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 19. **Audit and investigation.** Allows the commissioner to investigate and audit opt-out plans.

Subdivision 20. **Voluntary termination of an approved plan by an employer.** Allows a private plan to be terminated by an employer by notifying the commissioner at least 30 days before the termination.

Subdivision 21. **Employer obligations after termination of a private plan.** Requires the employer to provide notice to employees of the voluntary termination and that the termination will result in the employees being under the state plan.

Section 20. **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 information from the previous two taxable years. Those electing to participate pay premium as prescribed and must elect to participate for a minimum of two years.

Section 21. **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 22. **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 23. **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. Requires an employer to pay 50 percent of the premiums due under this chapter and the remainder is paid by a deduction from employee wages (employee charge back). Provides a formula for a small business wage exclusion for businesses with fewer than 30 employees. 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 one percent of taxable wages paid to each employee.

Section 24. **Income tax withholding and state taxation.** [§ 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. Specifies that benefits received under the plan are subject to state income tax.

Section 25. **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 26. **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 27. **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 28. **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 29. **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 30. **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. Interest collected (six percent) under this section is deposited into the family and medical benefit insurance account. 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. Allows the department to add costs for court and collection fees to be added to the total amount due.

Section 31. **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 32. **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 33. **Subpoenas; oaths.** [§ 268B.22] Grants the commissioner or hearing officer power to administer oaths, take depositions, certify official acts, and issue subpoenas when necessary for the administration of chapter 268B.

Section 34. **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 35. **Conciliation services.** [§ 268B.24] Allows the Department of Labor and Industry to offer conciliation services to help settle disputes arising under chapter 268B.

Section 36. **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 37. **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 38. **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 39. **Severable.** [§ 268B.28] Clarifies that if a provision or part of a provision under chapter 268B is found to be inconsistent with state or federal law, it has no effect, but any remaining portion of the provision may remain in effect.

Section 40. **Small business assistance grants.** [§ 268B.29] Allows the commissioner to make grants to businesses to defray the cost of hiring temporary workers or increasing wages while an employee is on leave.

Section 41. **Actuarial study.** Requires the commissioner of employment and economic development to contract with an independent actuarial consultant to determine the financial soundness of the family and medical benefit insurance program to be completed no later than October 31, 2023.

Section 42. **Application.** Specifies that family and medical benefits under chapter 268B, may be applied for and paid starting January 1, 2026.

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, 2026, for this article.

ARTICLE 3 APPROPRIATIONS

Article 3 makes appropriations for the purposes of implementing chapter 268B. See spreadsheet for details.