

Statutory Update



June 9, 2023

Minnesota Enacts Earned Sick and Safe Time and Paid Family and Medical Leave, and Amends Existing Laws

Last month the governor of Minnesota approved several measures impacting employee entitlements to leave and protections:

- ▶ [SF3035](#) (May 24)
 - Effective [July 1, 2023](#)
 - Amends the current Pregnancy and Parental Leave Act and the state’s “kin care” law
 - Amends current accommodations requirements for pregnant and lactating employees
 - Effective [January 1, 2024](#)
 - Implements Earned Sick and Safe Time
 - Repeals the kin care law

- ▶ [HF2](#) (May 25) establishes a mandatory Paid Family and Medical Leave program, with contributions and benefits beginning [January 1, 2026](#).

Below are summaries of each law’s provisions and requirements.

Click to jump to later sections:

- [Paid Family and Medical Leave](#)
- [Pregnancy and Parental Leave Act and Kin Care Amendments](#)
- [Amendments to Accommodations for Pregnant and Lactating Employees](#)

Earned Sick and Safe Time

Minnesota Earned Sick and Safe Time (ESST)	
SF3035 (adds MN Statutes §181.9445 through §181.9448)	
Website	https://www.dli.mn.gov/sick-leave
Effective Date	January 1, 2024 <i>SF3035 also repeals the state’s “kin care” law (MN Stat. §181.9413) effective January 1, 2024.</i>

Minnesota Earned Sick and Safe Time (ESST)
SF3035 (adds MN Statutes §181.9445 through §181.9448)

Applies to	<p>All Employers with one or more employees.</p> <ul style="list-style-type: none"> Excludes the federal government <p>All Employees, including temporary and part-time employees, who perform work for at least 80 hours in a year for their employer in Minnesota.</p> <ul style="list-style-type: none"> Excludes independent contractors, and individuals employed by an air carrier as a flight deck or cabin crew member who (1) is subject to 45 USC §181-188, (2) works less than a majority of their hours in Minnesota in a calendar year, and (3) is provided with paid leave equal to or exceeding the requirements of the ESST law.
Collective Bargaining Agreements	<ul style="list-style-type: none"> Nothing in the ESST law limits the right of parties to a collective bargaining agreement to bargain and agree with respect to ESST policies or to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that meets or exceeds, and does not otherwise conflict with, the law’s minimum standards and requirements. ESST provisions may be waived by a collective bargaining agreement with a bona fide building and construction trades labor organization that has established itself as the collective bargaining representative for the affected building and construction industry employees, but only if the waiver is clear and unambiguous, and explicitly references Minnesota Statutes §181.9445-181.9448.
Interplay with Other Laws or Company Policies	<ul style="list-style-type: none"> The ESST law does not preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick and safe time or that extends other protections to employees. <ul style="list-style-type: none"> Per the ESST website: <i>Earned sick and safe time local ordinances already exist in the cities of Bloomington, Duluth, Minneapolis and St. Paul. When Minnesota’s statewide earned sick and safe time law goes into effect January 1, 2024, employers must follow the most protective law that applies to their employees.</i> Employers who provide earned sick and safe time to their employees under a paid time off policy or other paid leave policy that may be used for the same purposes and under the same conditions as ESST, and that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements provided under the ESST law, are not required to provide additional earned sick and safe time.
Accrual	<ul style="list-style-type: none"> Beginning date of hire, 1 hour of ESST is earned per 30 hours of work, up to a maximum of 48 hours in a year. An employer may allow for a higher amount. <ul style="list-style-type: none"> “Year”: a regular and consecutive 12-month period, as determined by an employer and clearly communicated to each employee. Employees exempt from overtime requirements under the Fair Labor Standards Act are deemed to work 40 hours in each workweek, except that an employee whose normal workweek is less than 40 hours will accrue ESST based on the normal workweek Refer to the ‘Carryover’ section below for information regarding frontloading time.

Minnesota Earned Sick and Safe Time (ESST)
SF3035 (adds MN Statutes §181.9445 through §181.9448)

- Carryover**
- Employers **must permit** an employee to carry over accrued but unused ESST into the following year.
 - The **total amount** of accrued but unused earned ESST for an employee **must not exceed 80 hours at any time**, unless an employer agrees to a higher amount.
 - In lieu of carryover, an employer may provide an employee with ESST that is **available for the employee's immediate use** at the beginning of the subsequent year as follows:
 - 1) **48 hours**, if an employer **pays** an employee for accrued but unused ESST at the end of a year at the same hourly rate as an employee earns from employment; or
 - 2) **80 hours**, if an employer **does not pay** an employee for accrued but unused sick and safe time at the end of a year at the same or greater hourly rate as an employee earns from employment.

- Reasons for Use**
- 1) The employee's need for medical diagnosis, care, or treatment of a **mental or physical illness, injury, or health condition**, or for preventive medical care;
 - 2) To care for a covered family member who needs medical diagnosis, care, or treatment of a **mental or physical illness, injury, or health condition**, or for preventive medical care;
 - 3) Needs associated with the employee's or a covered family member's **domestic abuse, sexual assault, or stalking**, such as to:
 - seek medical attention for physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;
 - obtain services from a victim services organization;
 - obtain psychological or other counseling;
 - seek relocation or take steps to secure an existing home; or
 - seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding.
 - 4) Needs associated with a **public emergency***:
 - a) closure of the employee's place of business due to weather or other public emergency, or an employee's need to care for a family member whose school or place of care has been closed due to weather or other public emergency;
 - b) the employee's inability to work or telework because the employee is: (1) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or (2) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee's employer has requested a test or diagnosis; and
 - c) when it has been determined by the health authorities having jurisdiction or by a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease

* includes a declared emergency as defined in [MN Stat. §12.03](#) or a declared local emergency under [MN Stat. §12.29](#).

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SF3035 (adds MN Statutes §181.9445 through §181.9448)

- Covered Family Members**
- The employee's
 - spouse or registered domestic partner
 - child of any age (biological, foster, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in loco parentis; also includes child-in-law)
 - parent (biological, adoptive, foster, step-, or a person who stood in loco parentis when the employee was a minor child)
 - sibling (biological, foster, step-, in-law)
 - grandchild (biological, foster, step-)
 - grandparent (biological or step-)
 - sibling's child
 - parent's sibling
 - any of the family members listed above of the employee's spouse or registered domestic partner
 - any other individual related by blood or whose close association with the employee is the equivalent of a family relationship
 - up to one individual annually designated by the employee

- Use**
- Employees may use ESST **as it is accrued**, in the **smallest increment of time** tracked by the employer's payroll system, not to exceed **four hours**.
 - If the need for ESST is foreseeable, an employer **may require advance notice**, not to exceed **7 days**. If the need for ESST is unforeseeable, an employer may require an employee to give notice as soon as practicable.
 - An employer that requires advance notice must provide employees with a **written policy** outlining reasonable procedures for providing such notice. If a copy of the written policy has not been provided to an employee, an employer may not deny the use of ESST to the employee on that basis.
 - For absences of more than **three consecutive days**, an employer may require reasonable documentation that the time used is for an ESST-covered reason.
 - For reasons associated with an employee's or covered family member's health, including those related to a public emergency, reasonable documentation may include a signed statement by a health care professional indicating the need for use of ESST. However, if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, then reasonable documentation may include a written statement from the employee.
 - For reasons associated with domestic abuse, sexual assault or stalking, the employer must accept a court record or documentation signed by a volunteer or employee of a victims' services organization, an attorney, a police officer, or an antiviolence counselor as reasonable documentation. An employer may not require disclosure of details relating to domestic abuse, sexual assault, or stalking or the details of an employee's or an employee's family member's medical condition as related to an employee's request to use ESST.
 - For ESST to care for a family member whose school or place of care has been closed due to weather or other public emergency, an employer must accept as

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reasonable documentation a written statement from the employee indicating that the employee is using or used time for an ESST-qualifying purpose.

- Written statements by an employee may be written in the employee's first language and need not be notarized or in any particular format.

Termination, Transfer and Rehire

- **Payout** of accrued but unused ESST is **not required** upon the employee's termination, resignation, retirement, or other separation from employment.
- If an employee is **transferred** to a separate division, entity, or location, but remains employed by the same employer, the employee is entitled to all earned sick and safe time accrued at the prior division, entity, or location.
- When there is a separation from employment and the employee is **rehired within 180 days** of separation by the same employer, previously accrued ESST that had not been used must be reinstated. An employee is entitled to use accrued earned sick and safe time and accrue additional earned sick and safe time at the commencement of reemployment.
- When a **different employer succeeds** or takes the place of an existing employer, all employees of the original employer who remain employed by the successor employer are entitled to all ESST accrued but not used under the original employer.

If, at the time of transfer of the business, employees are terminated by the original employer and hired within 30 days by the successor employer following the transfer, those employees are entitled to all ESST accrued but not used under the original employer.

Employee Protections

- An employer **may not** discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against a person because the person has exercised or attempted to exercise rights protected under the ESST law.
- An employer **may not** require that the employee seek or find a replacement worker to cover the hours the employee uses as ESST.
- During any use of ESST, the employer must maintain coverage under any **group insurance** policy, group subscriber contract, or health care plan for the employee and any dependents, as if the employee was not using ESST, provided, however, that the employee must continue to pay any employee share of the cost of such benefits.
- An employee returning from ESST is entitled to **return to employment** in their former position, at the same rate of pay the employee had been receiving when the leave commenced, plus any automatic adjustments in the employee's pay scale that occurred during the leave period. The employee returning from ESST is entitled to retain all accrued pre-leave benefits of employment and seniority as if there had been no interruption in service, provided that nothing under the law prevents the accrual of benefits or seniority during the leave pursuant to a collective bargaining or other agreement between the employer and employees.
- An employee, by agreement with the employer, may **return to work part time** during the leave period without forfeiting the right to return to employment at the end of the leave.
- Nothing in the law prohibits an employer from:
 - establishing a policy whereby employees may **donate** unused accrued ESST to another employee; or
 - **advancing** ESST to an employee before accrual by the employee.

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Notice to Employees

- 1) **Employee Notice:** Employers must give notice to all employees that they are entitled to ESST by [January 1, 2024](#), and [at hire](#).
 - The notice must include:
 - the amount of ESST to be provided;
 - the accrual year;
 - the terms of ESST use;
 - that retaliation against employees who request or use ESST is prohibited; and
 - that each employee has the right to file a complaint or bring a civil action if ESST is denied by the employer or the employee is retaliated against for requesting or using ESST.
 - The notice must be provided in [English](#) and the [primary language](#) of the employee, as identified by the employee.
 - The notice may be provided by:
 - [posting](#) a copy of the notice at each location where employees perform work and where the notice must be readily observed and easily reviewed by all employees performing work;
 - providing a [paper or electronic copy](#) of the notice to employees; or
 - a conspicuous [posting in a web-based or app-based platform](#) through which an employee performs work.
 - As noted in the 'Use' section above, an employer that requires advance notice of the need for ESST must provide employees with a [written policy](#) outlining reasonable procedures for providing such notice. If a copy of the written policy has not been provided to an employee, an employer may not deny the use of ESST to the employee on that basis.
 - An employer that provides an [employee handbook](#) to its employees must include in the handbook notice of employee rights and remedies under the law.
 - A model notice will be made available by the Minnesota Department of Labor and Industry in the five most common languages spoken in Minnesota.

- 2) **Earnings Statements:** At the end of each pay period, the total number of ESST hours [accrued and available](#), as well as the hours [used](#) during that pay period, must be recorded on an employee's earnings statement (paystub) in accordance with [MN Stat. §181.032](#).

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Recordkeeping

Employers must retain accurate records documenting hours worked by employees and ESST taken for **3 years**, and in accordance with **§177.30** of the Minnesota Fair Labor Standards Act. An employer must allow an employee to inspect records relating to that employee at a reasonable time and place.

Confidentiality

- An employer with possession of any of the following in conjunction with ESST must treat such information as confidential:
 - health or medical information regarding an employee or an employee's family member;
 - information pertaining to domestic abuse, sexual assault, or stalking;
 - information that the employee has requested or obtained ESST; or
 - any written or oral statement, documentation, record, or corroborating evidence provided by the employee or an employee's family member.
- Information given by an employee may only be disclosed by an employer if the disclosure is requested or consented to by the employee, when ordered by a court or administrative agency, or when otherwise required by federal or state law.
- Records and documents relating to medical certifications, recertifications, or medical histories of employees or family members of employees created for ESST purposes must be maintained as confidential medical records **separate from the usual personnel files**. At the request of the employee, the employer must destroy or return records that are older than three years prior to the current calendar year.
- Employers may not discriminate against any employee based on records created for ESST purposes.

Paid Family and Medical Leave

Minnesota Paid Family and Medical Leave (MN PFML)
HF2 (*creates MN Statutes Chapter 268B*)

Website <https://mn.gov/deed/programs-services/paid-family/>

Effective Dates Contributions: [January 1, 2026](#)
 Benefits Entitlement: [January 1, 2026](#)

Additional dates:

Quarterly Wage Detail reporting requirements begin [July 1, 2024](#)
 Employee notification requirements begin [November 1, 2025](#)

Applies to [All Employers](#), including the state, state agencies and statewide public systems, with any individual in “Covered Employment”

- Excludes the federal government.

[All Employees](#)

- Excludes employees of the United States of America, self-employed individuals, independent contractors, or seasonal employees (*see definition below*).
- Self-employed individuals and independent contractors may opt in to the program

“Covered Employment”: an employee's entire employment during a calendar year if:

- [50% or more of the employment during the calendar year is performed in Minnesota](#);
- 50% or more of the employment during the calendar year is not performed in Minnesota or any other state, or Canada, but [some of the employment is performed in Minnesota and the employee's residence is in Minnesota during 50% or more of the calendar year](#);
- or
- 50% or more of the employment during the calendar year is not performed in Minnesota or any other state, or Canada, but [the place from where the employee's employment is controlled and directed is based in Minnesota](#).

This definition does not apply to self-employed individuals, independent contractors, or seasonal employees as defined below.

“Seasonal Employee”: an individual who is employed for no more than 150 days during any consecutive 52-week period in [hospitality](#) (*as defined in MN Stat. §157.15 subd. 4-9 and 11-14*) by an employer whose average receipts during any six months of the preceding calendar year were not more than 33 percent of its average receipts for the other six months of such year (*see full definition in Sec. 9 of the law text (268B.01, subd. 35)*).

An applicant is not eligible to receive benefits or take protected leave under the provisions of this chapter for any week the applicant is a seasonal employee. If MN PFML benefits are denied to any applicant who remains employed more than 150 days, the applicant is only entitled to benefits beginning the Sunday following the completion of the 150-day period.

Employers must apply to the Minnesota Department of Employment and Economic Development (DEED) to classify an employee as a seasonal employee and notify DEED

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within 5 business days of any employee who is no longer classified as a seasonal employee (methods TBD).

Collective Bargaining Agreements

The MN PFML law does not limit the parties to a [collective bargaining agreement](#) from bargaining and agreeing with respect to leave benefits and related procedures and employee protections that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements under MN PFML.

Types of Plans

- [State Program](#) administered by the Family and Medical Benefits Division of the Minnesota Department of Employment and Economic Development (DEED)
- [Private Plan](#)
 - Employers may apply for a private plan that provides paid [family leave](#), paid [medical leave](#), or [both](#).
 - An employer with an approved private plan will not be required to remit the contributions associated with the leave type(s) covered under the private plan.
 - Employees covered by a private plan may not be charged a higher rate than the state program rate.
 - A private plan must meet or exceed the benefits, rights, and protections outlined for the state program.
 - If the private plan provides for [insurance](#), the policy must be issued by an insurer authorized to engage in the business of insurance in the state.
 - If an insured private plan has made advance payments of MN PFML benefits or has made payments to an employee in like manner as wages during any period of family or medical leave for which the employee is entitled to MN PFML benefits, the employer is entitled to be [reimbursed by the carrier](#) out of any benefits due or to become due for the family or medical leave, if the claim for reimbursement is filed with the carrier [prior to payment](#) of the benefits by the carrier.
 - If the private plan is in the form of [self-insurance](#), the employer must furnish a [surety bond](#) in an amount equal to the employer's annual state program premiums. The surety bond must be in a form approved by the commissioner and issued by a surety company authorized to transact business in Minnesota.
 - An employer with an approved private plan is responsible for a [private plan approval and oversight fee](#) equal to \$250 for employers with fewer than 50 employees, \$500 for employers with 50 to 499 employees, and \$1,000 for employers with 500 or more employees.

The employer must pay this fee (1) upon [initial application](#) for private plan approval, and (2) any time the employer applies to [amend](#) the private plan.
 - Private plan benefits may be paid to align with the employer's [payroll cycle](#) or according to the terms of the approved private plan.
 - A private plan must be in effect for a period of [at least one year](#) and, thereafter, continuously until withdrawn by the employer. The plan may be withdrawn by the employer within 30 days of the effective date of any law increasing the benefit amounts or within 30 days of the date of any change in the rate of premiums. If the plan is not withdrawn, it must be administered to provide the increased benefit

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amount or change in the rate of the employee's premium on the date of the increase or change.

- DEED must approve any **amendment**, other than mandated program change, to a private plan adjusting the provisions thereof, if it determines that the plan, as amended, will conform to required standards, and that **notice of the amendment** has been delivered to all affected employees at least ten days before the submission of the amendment.
Any amendments approved are effective on the date of approval, unless DEED and the employer agree on a later date.
- A private plan in effect at the time a **successor** acquires the employer organization, trade, or business, or substantially all the assets thereof, or a distinct and severable portion of the organization, trade, or business, and continues its operation without substantial reduction of personnel resulting from the acquisition, must continue the approved private plan and must not withdraw the plan without a specific request for withdrawal in a manner and at a time specified by the commissioner. A successor may terminate a private plan with notice to DEED and within 90 days from the date of the acquisition.
- **DEED may terminate** any private plan and/or assess penalties if it is determined that the private plan design or administration fails to comply with the law's requirements.
- Employers with an approved private plan must maintain all reports, information, and records as relating to the private plan and claims for a period of **six years** from creation and provide to the commissioner upon request.
- An **employer may terminate** its approved private plan by notifying the commissioner in writing at least **30 days** before the voluntary termination's effective date. The employer must **notify employees** of the voluntary termination no later than 30 days before the termination's effective date.
- Within **7 days** of the effective date of a **voluntary or involuntary termination** of private plan approval, the employer must **notify all employees** of the termination and notify all employees that they are under the state program as a result of the termination.
- If an employer's workforce becomes covered by the state program because the employer's private plan approval was voluntarily or involuntarily terminated, the **employer must remain covered by the state program** and pay premiums to the state for a period of at least **3 years**.

Contributions

- **Employer- and Employee-Paid**, beginning **January 1, 2026**
Total premium rate: **0.7%** of employees' taxable wages*
 - Medical: **0.4%**
 - Family: **0.3%**
- Employers must pay a minimum of **50%** of the required premium (*i.e., 0.35% of wages in 2026*).
- The premium rate will be adjusted annually beginning **January 1, 2027**, and by **July 31** of each year thereafter. In no year will the annual premium rate exceed **1.2%** of taxable wages paid to each employee.
- Premiums must be remitted to the state on or before the last day of the month following the end of the calendar quarter.

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* “Wages” means all compensation for employment, as fully defined in [MN Stat. §268.035.29](#)

“Taxable wages”: wages paid to an employee in Covered Employment each calendar year, up to the [maximum earnings subject to the FICA Old-Age, Survivors, and Disability Insurance tax](#) in that year (\$160,200 in 2023) rounded to the nearest \$1,000.

Note: An actuarial study will be conducted and presented to the state legislature no later than October 31, 2023. If the study indicates that the premium rate set is not actuarially sound, the rate may be adjusted.

- **Private Plans:**
 - Employees covered by a private plan may not be charged a higher rate than the state program rate.
 - An employer with an approved private plan will not be required to remit the contributions associated with the leave type(s) covered under the private plan.
- Program contributions must not cause an employee's wage, after the deduction, to fall below the rate required to be paid to the worker by law, including any applicable statute, regulation, rule, ordinance, government resolution or policy, or other legal authority, whichever rate of pay is greater.
- **Small business wage exclusion:**
 - 1) For **employers with fewer than 30 employees**, the amount of wages upon which quarterly employer premium is required is reduced by the premium rate to be paid by the employer multiplied by the lesser of:
 - a. \$12,500 multiplied by the number of employees; or
 - b. \$120,000
 - 2) For each employee over 20 employees, the exclusion is reduced by \$12,000.
 - 3) The premium paid by the employer as a result of the reduction allowed must not be less than zero.

The reduction in premiums paid by the employer is for the sole benefit of the employer and does not relieve the employer from deducting the employee portion of the premium.

Reasons for Leave

- The employee's inability to work due to a **serious health condition or medical care related to pregnancy**
- To **bond with a new child**

Bonding leave begins at a time requested by the employee and must end within 12 months of the birth, adoption, or placement of a foster child, except that, in the case where the child must remain in the hospital longer than the mother, the leave must end within 12 months after the child leaves the hospital.

Employees may also use bonding leave before the actual placement or adoption of a child in situations that include, but are not limited to, where the employee may be required to attend counseling sessions, appear in court, consult with the attorney or doctors representing the birth parent, submit to a physical examination, or travel to another country to complete an adoption.
- To **care for a covered family member** with a serious health condition
- For “**safety leave**” to attend to the employee's or a family member's needs associated with domestic abuse, sexual assault, or stalking
- Due to a **qualifying exigency** arising out of a military member's active duty service or notice of an impending call or order to active duty in the United States armed forces

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"Military member" means a current or former member of the United States armed forces, including a member of the National Guard or reserves, who is a resident of the state and is a family member of the applicant taking leave related to the qualifying exigency.

Covered Family Members

- Employee’s spouse or domestic partner
- Employee’s child (biological, adopted, or foster child, a stepchild, child-in-law, or a child to whom the applicant stands in loco parentis, is a legal guardian, or is a de facto parent)
- Employee’s or spouse’s parent (biological, adoptive, de facto, or foster parent, stepparent, or legal guardian), or an individual who stood in loco parentis to the employee as a child
- Employee’s sibling
- Employee’s or spouse’s grandparent
- Employee’s grandchild
- An individual who has a relationship with the employee that creates an expectation and reliance that the employee care for the individual, whether or not the employee and the individual reside together

Leave Entitlement

12 weeks, with a maximum of **20 weeks medical leave and other types of leave combined**

Except for bonding leave, any claim for benefits must be based on a single qualifying event of at least **seven calendar days**. The days must be consecutive unless leave is intermittent.

Intermittent Leave

- Leave based on a serious health condition may be taken intermittently if reasonable and appropriate to the needs of the individual with the serious health condition. For all other leave types, leave may be taken intermittently.
- The minimum duration to receive MN PFML benefits is **one workday** in a work week.
- An employer may (but is not required to) limit intermittent leave to 480 hours in any 12-month period. If an employer elects to limit hours of intermittent leave, an employee is entitled to take their remaining leave continuously.
- An employee requesting intermittent leave taken must provide the employer with a schedule of needed workdays off as soon as practicable and must make a reasonable effort to schedule the intermittent leave so as not to unduly disrupt the operations of the employer. If this cannot be done to the satisfaction of both employer and employee, the employer may not require the employee to change their leave schedule in order to accommodate the employer.
- An employer may run intermittent leave available under the Family and Medical Leave Act of 1993 (FMLA) (**29 USC Ch. 28**) concurrently with an employee's entitlement to intermittent leave under the MN PFML law.

Minnesota Paid Family and Medical Leave (MN PFML)

HF2 (*creates MN Statutes Chapter 268B*)

**Waiting/
Elimination
Period**

No *unpaid* waiting period. However, as noted above, the period for which an applicant is seeking benefits must be based on a **single event of at least seven calendar days' duration** related to the applicant's serious health condition or medical care related to pregnancy, family care, a qualifying exigency, or safety leave; it does not apply to leave for bonding with a new child. The days must be **consecutive, unless the leave is intermittent**.

**Notice to
Employer**

- An employee must provide their employer notice of the intention to take covered leave at least **30 days** in advance. If 30 days' notice is not possible because of a lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable.
 - An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, including the employer's attendance or call-out policies and procedures, absent unusual circumstances or other circumstances caused by the reason for the employee's need for leave. Leave under the MN PFML law may not be delayed or denied where an employer's usual and customary notice or procedural requirements require notice to be given sooner than the law's requirements.
- Notice must be provided in a manner sufficient to make the employer aware of the employee's need for leave and the anticipated timing and duration of the leave. Notice may be provided **verbally or in writing**, including text message.
- Whether leave is to be continuous or is to be taken intermittently, **notice need only be given one time**, but the employee must advise the employer as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown.
- An employer *may* require that an employee taking MN PFML provide a copy of certification supporting the need for leave. Upon written request from the employer, the employee must provide a copy of the certification as soon as practicable and possible given all of the facts and circumstances in the individual case. Providing certification at or around the time the employee provides a certification to DEED will be considered practicable.

**Application for
Benefits**

- An application for benefits may be filed up to **60 days prior** to the start of leave, in person, by mail, or by electronic transmission.
- An application for family or medical leave benefits is effective the Sunday of the calendar week that the application was filed.
 - An application for benefits may be backdated one calendar week before the Sunday of the week the application was actually filed if the applicant requests the backdating within seven calendar days of the date the application is filed. An application may be backdated only if the applicant was eligible for the benefit during the period of the backdating. If an individual attempted to file an application for benefits, but was prevented from filing an application by DEED, the application is effective the Sunday of the calendar week the individual first attempted to file an application.
- During application for MN PFML benefits the applicant must disclose if child support obligations are owed and, if so, in what state and county. Upon completion of a successful application, DEED must notify the child support agency.

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HF2 (creates MN Statutes Chapter 268B)

Weekly Benefits

Benefit Formula

An applicant's weekly benefit is calculated by adding the amounts obtained by applying the following percentages to an applicant's average typical workweek and weekly wage during the high quarter of their base period:

- 1) 90% of the employee's average weekly wages* that are 50% or less than the state average weekly wage (SAWW)*; *plus*
- 2) 66% of wages between 51% and 100% of the SAWW; *plus*
- 3) 55% of wages that exceed 100% of the SAWW

The **Maximum Weekly Benefit** will be equivalent to the SAWW.

* *Employee's average weekly wage: an amount equal to the employee's high quarter wages divided by 13.*

** *The SAWW, \$1,287 as of 10/1/2022, is calculated on or before each June 30 (per MN Stat. §268.035.23 (Unemployment Insurance Law)), and applies to a benefit account established effective on or after the last Sunday in October. Once established, an applicant's weekly benefit amount is not affected by the change in the state's maximum weekly benefit amount.*

Benefit Determination

- Upon receipt of a completed application DEED will use the information provided to determine the following (*terms defined below*):
 - 1) the employee's **Base Period** and **Benefit Year** and, based upon all Covered Employment in the Base Period,
 - 2) the **weekly benefit amount** and the **maximum amount of benefits** available, if any. This **determination of benefit account** is separate and distinct from a determination of eligibility. A determination of benefit account notification will be sent to the applicant and all Base Period employers, by mail or electronic transmission.
 - To establish a benefit account, an applicant must have **wage credits** of at least 5.3 percent of the state's average annual wage rounded down to the next lower \$100 (~ \$3,500 in wages based on current SAWW).
- MN PFML **benefits may be prorated** when:
 - an employee works hours for wages;
 - the employee uses paid sick leave, paid vacation leave, or other paid time off that is not considered a "supplemental benefit payment" (*defined in the 'Coordination with Other Leaves and Programs' section below*); or
 - leave is taken intermittently.

Definitions

"Benefit Account":

Established by DEED upon application for MN PFML benefits, an employee's weekly benefit amount and maximum benefits available based upon wages during all Covered Employment in the Base Period.

"Base Period":

- An applicant's Base Period for MN PFML benefits will be determined as follows:
 - 1) If an application for MN PFML benefits has an effective date **during the month following the most recent completed calendar quarter** (*i.e., during*

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the months of January, April, July or October), the Base Period is the **first four of the most recent five** completed calendar quarters before the effective date of the application.

Example: If the application effective date is between January 1 and January 31, the base period is the prior October 1 through September 30.

- 2) If an application for MN PFML benefits has an effective date occurring **after the month following the most recent completed calendar quarter** (i.e., during the second or third months of a calendar quarter), the Base Period is the **most recent four** completed calendar quarters before the effective date of the application.

Example: If the application effective date is between February 1 and March 31, the base period is the prior January 1 through December 31.

However, a Base Period of the first four of the most recent five completed calendar quarters must be used if the applicant would have more wage credits under that base period than under a base period of the four most recent completed calendar quarters.

- If the applicant has insufficient wage credits to establish a benefit account under one of the Base Periods defined above, but during either Base Period the applicant received **workers' compensation** for temporary disability under state or federal law, or if the applicant whose own serious illness caused a loss of work for which the applicant received compensation for loss of wages from some **other source**, the applicant may request an alternative base period as outlined in Sec. 9 of the **law text** (268B.01, subd. 5(d)).
- **Private plans:** For an applicant covered under a private plan, the base period is the most recent four quarters in which wage credits were earned with the current employer as provided by the current employer. If an employer does not have four quarters of wage detail information, the employer must accept an employee's certification of wage credits, based on the employee's records. If the employee does not provide certification of additional wage credits, the employer may use a base period that consists of all available quarters.

“Benefit Year”:

For **state program** benefits, the period of 52 calendar weeks beginning the date an applicant's benefit account is effective. For a benefit account established effective any January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 calendar weeks.

For **private plan** benefits:

- a calendar year;
- any fixed 12-month period, such as a fiscal year or a 12-month period measured forward from an employee's first date of employment;
- a 12-month period measured forward from an employee's first day of leave taken; or
- a rolling 12-month period measured backward from an employee's first day of leave taken.

Employers are required to notify employees of their benefit year within 30 days of the private plan approval and first day of employment.

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“Wages”: all compensation for employment, as fully defined in [MN Stat. §268.035.29](#).

“Wage credits”: the amount of wages paid within an applicant's Base Period for Covered Employment.

Taxation of Benefits

Federal income tax

If the Internal Revenue Service determines that MN PFML benefits received are subject to federal income tax, the applicant may elect to have federal income tax deducted and withheld from the applicant's benefits

State income tax

MN PFML benefits are [subject to state income tax](#). If the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld.

Notification

Upon filing an application for benefits, the applicant must be informed that:

- 1) benefits are subject to federal and state income tax;
- 2) there are requirements for filing estimated tax payments;
- 3) the applicant may elect to have federal income tax withheld from benefits;
- 4) if the applicant elects to have federal income tax withheld, the applicant may, in addition, elect to have Minnesota state income tax withheld; and
- 5) at any time during the benefit year the applicant may change a prior election.

Withholding

If an applicant elects to have federal income tax withheld, the commissioner must deduct ten percent for federal income tax. If an applicant also elects to have Minnesota state income tax withheld, DEED must make an additional five percent deduction for state income tax. Any amount deducted under section 268B.06 (*i.e., offsets for workers' compensation, severance payments, etc., as described in 'Coordination with Other Leaves and Programs' below*) has priority over any amounts deducted under this section. Federal income tax withholding has priority over state income tax withholding. An election to have income tax withheld may not be retroactive and only applies to benefits paid after the election.

The amount of any benefits deducted remains in the family and medical benefit insurance account until transferred to the Internal Revenue Service, or the Minnesota Department of Revenue, as an income tax payment on behalf of the applicant.

Employment and Benefits Protection

- An employer must not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee for requesting or obtaining MN PFML benefits or leave, or for exercising any other right under the law.
- An employer may not require an employee to seek or find a replacement worker to cover the hours the employee uses under MN PFML.

Maintenance of Benefits

- During MN PFML, the employer must [maintain coverage](#) under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents as if the employee was not on leave, provided, however, that the employee must continue to pay any employee share of the cost of such benefits.

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This requirement may be waived for employees who are working in the construction industry under a bona fide collective bargaining agreement that requires employer contributions to a multiemployer health plan pursuant to [29 USC §186\(c\)\(5\)](#), but only if the waiver is set forth in clear and unambiguous terms in the collective bargaining agreement and explicitly cites 268B.09 subdivision 5.

Job Protection/Reinstatement

See Sec. 18 / 268B.09 of the [law](#) for full text

- Individuals employed for at least **90 days** are entitled to the MN PFML law's reinstatement provisions.
- Employees returning from MN PFML are entitled to be **restored to the same position** held when leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence. If the employee is no longer qualified for the position because of the employee's inability to attend a necessary course, renew a license, fly a minimum number of hours, or similar condition, as a result of the leave, the employee must be given a reasonable opportunity to fulfill those conditions upon return from leave.
 - Benefits include all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether benefits are provided by a practice or written policy of an employer through an employee benefit plan as defined in [29 USC §1002\(3\)](#) (ERISA).
 - At the end of an employee's leave, benefits must be resumed in the same manner and at the same levels as provided when the leave began, and subject to any changes in benefit levels that may have taken place during the period of leave affecting the entire workforce, unless otherwise elected by the employee. Upon return from MN PFML, an employee must not be required to requalify for any benefits the employee enjoyed before leave began, including family or dependent coverages.
 - An employee may, but is not entitled to, accrue any additional benefits or seniority during MN PFML. Benefits accrued at the time leave began must be available to an employee upon return from leave.
 - With respect to pension and other retirement plans, MN PFML must not be treated as or counted toward a break in service for purposes of vesting and eligibility to participate. If the plan requires an employee to be employed on a specific date in order to be credited with a year of service for vesting, contributions, or participation purposes, an employee on leave under this chapter must be treated as employed on that date. Periods of leave under this chapter need not be treated as credited service for purposes of benefit accrual, vesting, and eligibility to participate.
 - Nothing in the law prohibits an employer from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or from offering a promotion to a better position. However, an employee must not be induced by the employer to accept a different position against the employee's wishes.
- An employee is entitled to any **unconditional pay increases** which may have occurred during the leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance

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with the employer's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify for MN PFML. An employee is entitled to be restored to a position with the same or equivalent pay premiums, such as a shift differential. If an employee departed from a position averaging ten hours of overtime, and corresponding overtime pay, each week, the employee is ordinarily entitled to such a position on return from MN PFML.

The requirements above may be waived for employees who are working in the construction industry under a bona fide collective bargaining agreement with a construction trade union that maintains a referral-to-work procedure for employees to obtain employment with multiple signatory employers, but only if the waiver is set forth in clear and unambiguous terms in the collective bargaining agreement and explicitly cites 268B.09 subdivisions 6 and 7.

Coordination with Other Leaves and Programs

- An employer **may** require MN PFML to run concurrently with leave taken for the same purpose under the Minnesota Pregnancy and Parental Leave Act ([MN Stat. §181.941](#)) or the Family and Medical Leave Act of 1993 (FMLA) ([29 USC Ch. 28](#))
- An employer **may not** require an employee to exhaust accumulated sick, vacation, or personal time before or while taking MN PFML.
- An employee may use **vacation pay, sick pay, paid time off pay, or disability insurance payments** in lieu of MN PFML program benefits. An employee remains entitled to the MN PFML law's employment protections for those workdays during which this option is exercised. This provision also applies to private plans.
- An employer may offer **supplemental benefit payments** to an employee taking MN PFML.
 - A **supplemental benefit payment** is defined as
 - 1) a payment made by an employer to an employee as salary continuation or as paid time off. Such a payment must be **in addition to MN PFML benefits**; and
 - 2) a payment offered by an employer to an employee to **supplement** the MN PFML benefits the employee is receiving.
 - Employers may, but are not required to, designate certain benefits including, but not limited to, **salary continuation, vacation leave, sick leave, or other paid time off** as a supplemental benefit payment.
 - The choice to receive supplemental benefits lies with the employee.
 - The total amount of MN PFML benefits and the supplemental benefits paid must not exceed the employee's usual salary.
- An employer may provide additional benefits, including but not limited to covering the portion of earnings not provided during periods of MN PFML, including through a supplemental benefit payment.
- **Separation, severance, or bonus payments:** An applicant is not eligible to receive MN PFML benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment.

If the payment with respect to a week is equal to or more than the applicant's weekly MN PFML benefit amount, the applicant is ineligible for MN PFML benefits for that week. If the payment with respect to a week is less than the applicant's weekly MN PFML benefit amount, MN PFML benefits are reduced by the amount of the payment. This does not apply to vacation pay, sick pay, personal time off pay, or supplemental benefit payments.

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- **Workers' Compensation:** An applicant is not eligible to receive MN PFML benefits for any portion of a week in which the applicant is receiving or has received workers' compensation benefits equal to or in excess of the applicant's weekly MN PFML benefit amount. If the amount of the workers' compensation benefit for any week is less than the applicant's weekly MN PFML amount, MN PFML benefits requested for that week will be reduced by the amount of that compensation payment.
- **Social Security Disability:** An applicant who is receiving, has received, or has filed for primary Social Security disability benefits for any week is ineligible for benefits for that week, unless:
 - 1) the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period; or
 - 2) the applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is able to perform the essential functions of their employment with or without a reasonable accommodation.

If an applicant meets either of these requirements there is no deduction from the applicant's weekly benefit amount for any Social Security disability benefits.

Reporting

Wage Detail Report - beginning July 1, 2024

- Each employer must submit a **quarterly** wage detail report, which must include for each employee in Covered Employment and for each seasonal employee during the calendar quarter:
 - the employee's name;
 - the total wages paid to the employee; and
 - total number of paid hours worked.

For employees exempt from the definition of employee in the Minnesota Fair Labor Standards Act (*i.e., individuals employed in a bona fide executive, administrative, or professional capacity, or a salesperson who conducts no more than 20 percent of sales on the premises of the employer, per MN Stat. §177.23.7(6)*), the employer must report 40 hours worked for each week any duties were performed by a full-time employee and must report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee.
- In addition, the wage detail report must include the number of employees employed during the payroll period that includes the 12th day of each calendar month and, if required by DEED, must be broken down by business location and separate business unit.
- The report is due and must be received by DEED on or before the **last day of the month following the end of the calendar quarter**, even for quarters during which no wages were paid, unless the business has been terminated. The commissioner may delay the due date on a specific calendar quarter in the event DEED is unable to accept wage detail reports electronically
- The report must be submitted by electronic transmission in a format prescribed by DEED. DEED has the discretion to accept wage detail reports that are submitted by any other means or may return a report submitted by means other than electronic

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transmission to the employer. Reports returned are considered as not submitted and late fees may be imposed.

Effective November 1, 2025

Notice to Employees

- 1) Each employer must **post in a conspicuous place** on each of its premises a workplace notice prepared by DEED providing notice of benefits available under the MN PFML program. The notice must be in English and each language other than English which is the primary language of five or more employees or independent contractors of that workplace, if such translation is available from DEED.
- 2) Each employer must **issue to each employee** not more than 30 days from the beginning date of the employee's employment, or 30 days before premium collection begins, whichever is later, the following written information provided by DEED in the primary language of the employee:
 - an explanation of the availability of MN PFML benefits, including rights to reinstatement and continuation of health insurance;
 - the amount of premium contributions made by the employer;
 - the employer's premium amount and obligations;
 - the name and mailing address of the employer;
 - the identification number assigned to the employer by DEED;
 - instructions on how to file a claim for MN PFML benefits;
 - the mailing address, e-mail address, and telephone number of DEED; and
 - any other information required by DEED.

Delivery is made when an employee provides written or electronic acknowledgment of receipt of the information, or signs a statement indicating refusal to sign such acknowledgment.

- 3) *Beginning January 1, 2026:* Contributions collected by the employer from the employee and remitted to the state must be reflected on the **employee's earnings statement at the end of each pay period**, in accordance with requirements under **MN Stat. §181.032**. Statements must remain available for three years.

- Notices may be provided in **paper or electronic format**. For notice provided in electronic format only, the employer must provide employee access to an employer-owned computer during an employee's regular working hours to review and print required notices.
- DEED will prepare a **model notice** for employers to use that provides the notice information required. The model notice will be made available in the five most common languages spoken in Minnesota.
- **Notice to Seasonal Employees:** Each employer who employs or intends to employ seasonal employees (*defined in the 'Applies to' section above*) must issue to each seasonal employee a **notice that the employee is not eligible** to receive MN PFML benefits while the employee is so employed. The notice must be provided at the time an employment offer is made, or by **November 30, 2025**, for the employer's existing seasonal employees, and be in a form provided by DEED.

Delivery is made when an employee provides written or electronic **acknowledgment of receipt** of the information, or signs a statement indicating refusal to sign such acknowledgment.

Pregnancy and Parental Leave Act and Kin Care Amendments

Minnesota's [Pregnancy and Parental Leave Act \(MN Stat. §181.941\)](#) provides employees with up to 12 weeks of unpaid leave for prenatal care or incapacity due to pregnancy, childbirth or related health conditions, or to bond with a new child within 12 months of birth or adoption.

The state's [sick and safe leave \("kin care"\) law* \(MN Stat. §181.9413\)](#) requires employers who provide employees with paid time off for illness or injury to permit a portion of that time to be used for the employee to care for an ill or injured family member, or for needs associated with sexual assault, domestic abuse, harassment or stalking.

Both laws currently apply to employers with 21 or more employees, and employees are eligible if, at the time of the request for leave, they (1) have been employed by the employer for at least 12 months (not necessarily consecutive), and (2) worked an average number of hours per week equal to one-half the employer's full-time equivalent during the immediately preceding 12 months.

Effective [July 1, 2023, SF3035](#) amends both laws so that requirements apply to [all employers](#), and [removes the service requirements](#) for employee eligibility.

** As mentioned above, the kin care law will be repealed, and replaced by the new Earned Sick and Safe Time law, as of January 1, 2024.*

Amendments to Accommodations for Pregnant and Lactating Employees

[SF3035](#) also amends current requirements for accommodations for pregnant and lactating employees ([MN Stat. §181.939](#)). Effective [July 1, 2023](#), the amendments:

- remove the limitation that accommodations for [nursing and lactating employees](#) need only be made during the 12 months following the child's birth;
- indicate that breaks to express milk "may" run concurrently with regular break periods, vs. "must";
- remove the exception for employers for whom providing accommodation would "unduly disrupt" operations;
- specify that the location provided for lactation must be clean, private and secure;
- change the threshold for [pregnancy accommodations](#) from employers with 15 or more employees to employers with [one or more employees](#);
- expand the examples of reasonable accommodations for pregnancy (changes in *italics*): Reasonable accommodation may include but is not limited to temporary transfer to a less strenuous or hazardous position, *temporary leave of absence, modification in work schedule or job assignments*, seating, *more frequent restroom breaks or longer break periods*, and limits to heavy lifting.
- reinforce protections with the following (changes in *italics*): An employer shall not *discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate* against an employee for asserting rights or remedies [under the law].

The amendments also add a [new notice requirement](#):

- Employers must inform employees of their rights (1) at the time of hire and (2) when an employee makes an inquiry about or requests parental leave.
- Notice must be provided in English and the primary language of the employee, as identified by the employee.
- An employer that provides an employee handbook to its employees must include the notice in the handbook.
- A model notice will be made available by the Minnesota Department of Labor and Industry in English and the five most common languages spoken in Minnesota.

Please contact your MMA account team members with specific questions about this or other Updates. View past Updates on the Absence, Disability & Life blog at <https://mma-adl.com/blog/>.

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