



Response to Public Comments on Paid Leave Rulemaking taken between January 22 and July 10, 2024

Introduction

Scope

The Minnesota Department of Employment and Economic Development (“Department”) is using the expedited rulemaking process, as authorized by Minnesota Statutes, section 268B.02, subdivision 3, to complete this round of rulemaking before the Minnesota Paid Leave program’s benefits become available on January 1, 2026.

The proposed rules provide additional clarification on a variety of topics necessary to implement the Paid Leave program, Minnesota Statutes, chapter 268B, including: health care provider certification, seasonal employees, election of coverage, covered individuals’ notification to employers, employer response to requests for information, designation of supplemental benefits, reporting of fraud, suspension of payments, overpayments, offset of benefits received from other states, leave schedules and modifications, intermittent leave, benefits calculation, backdating of applications, payment of benefits after death, requirements for employers applying for private plan exemptions, caring leave, small employer grants and safety leave. The proposed rules include the definitions of additional key terms. The proposed rules also address program participation, processing of applications for and changes to benefits, as well as dispute resolution.

In order to gather robust feedback related to the proposed rule topics, the Department conducted an initial public comment period. The Department accepted public comments through the Office of Administrative Hearings (OAH) between January 22 and July 10, 2024. The Department also hosted 19 virtual listening sessions between June 17 and July 10, 2024 to collect written and verbal public comments on draft rules. Across these opportunities, the Department collected more than 600 spoken and written comments.

Review of comments and organization of response to comments

In this document, the Department responds to comments pertaining to Paid Leave rulemaking that required an agency response. Where appropriate, the Department has grouped similar comments by topic and provided responses under each topic. These topics generally align with the proposed rule topics and the associated listening sessions.

Health Care Providers

Comments on definitions

The majority of comments the Department received under this topic were in support of aligning the definition of health care providers with the definition of this term as provided in the federal Family Medical Leave Act (FMLA). Commenters suggested that aligning the meaning of this term in the federal and state programs will help avoid confusion. One comment opposed aligning the definitions on the ground that the existing statutory definition is broad. Another comment suggested that the definition of health care providers should expressly include Certified Professional Midwives who are licensed by the Minnesota Board of Medical Practice.

Agency Response: The Department agrees with the suggestions in support of the proposed alignment with the definition in the FMLA regarding health care providers, and revised the proposed rules accordingly under 3317.0015, subpart 7. The Department also agrees that express recognition of licensed midwives as health care providers is important to better implement the statute and revised the proposed rules accordingly under 3317.0015, subpart 7.

Comments on health care provider certification

The Department received comments in support of the proposed rules regarding out-of-state certification.

Agency response: The Department agrees with the comments and made no changes to the rule as proposed.

Seasonal Employees

Comments on receipts

The Department received comments regarding the definition of “receipts,” including a suggestion that the Department align its definition of this term with that used by the Department of Revenue for administering sales tax.

Agency Response: The Department determined that the suggestions to incorporate the Department of Revenue’s definition of “receipts” would help facilitate implementation of the statute, and revised the proposed rules accordingly under 3317.3000, subpart 1.

Comments on the definition of “seasonal employment”

The Department received comments on the definition of “seasonal employment.” These comments included suggestions that the definition of “seasonal employee” be applied to any employee working in a hospitality role for any covered employer and that the description of seasonal employee be amended to include the word “hospitality,” such as “hospitality seasonal employee” or “seasonal hospitality employee,” to prevent confusion.

Agency Response: The Department determined that, instead of making a rule that amends the description associated with a statutorily-defined term, it will provide the necessary clarification to facilitate implementation through program communications.

Comments on duration of employment for seasonal employees

The Department received comments on the determination of employment duration for seasonal employees. A comment suggested the Department should clarify the computation of the 150-day maximum employment duration for hourly worker: whether it should be based on hours worked or calendar days.

Agency Response: The Department determined that the suggestion regarding 150 calendar days would help facilitate implementation of the statute, and revised the proposed rules accordingly under 3317.3000, subpart 3.

Opting In

Comments on election of coverage

The Department received a comment suggesting that self-employed individuals and independent contractors opting into the Paid Leave program should be “locked in,” and not be allowed to go on and off the program.

Agency Response: The Department disagrees such a rule is needed at this time, because the statute already provides requirements for opting in under Minnesota Statutes, section 268B.11.

Employer Notifications

Comments on validation of covered individuals' notification to employers

The Department received comments in support of sharing the proof of attestation with the employer. The Department also received comments suggesting that the rule should require employees to abide by their employer’s notification policies.

Agency Response: The Department agrees with comments in support of sharing the proof of attestation with the employer and made no changes to the rule as proposed. Employees' compliance with employers' notification policies is addressed by Minnesota Statutes, section 268B.085, subdivision 1(e) and need not be addressed in rule.

Comments on failure to notify employer

The Department received comments about the potential consequences of failing to notify an employer. Suggestions include that there should be an opportunity to object if an employee has not provided proper notice of their intent to take leave, and that there should be a rule to withhold benefits in the event an employer is not properly notified.

Agency Response: The Department disagrees with the suggestions and has determined the proposed rules at 3317.4100 is the most appropriate approach given the requirements outlined in the statute.

Requests for Information

Comments on employer response to requests for information

The Department received comments proposing to increase the seven-calendar-day notice requirement to 10 or 14 days.

Agency Response: After consideration, the Department decided that setting the period at seven days best implements the statute by preventing unnecessary delays in the approval of leave requests.

Supplemental Benefits

Comments on designation of supplemental benefits

The Department received a comment that the Department should incentivize employers to provide supplemental benefits and to clarify that employer-provided benefits may not be used to extend Paid Leave benefits.

Agency Response: The Department determined that this issue is outside the scope of the proposed rules.

Fraud

Comments on reporting fraud

The Department received comments related to fraud reporting and prevention. All the comments were generally supportive of the proposed rule. Some comments were related to the wording of the proposed rule where it stated "an employee's sincere report of fraud is not to be considered an act of retaliation." These commenters expressed concerns with the subjectivity of the term "sincere."

Agency Response: The Department determined these suggestions would help facilitate implementation of the statute and revised the proposed rules accordingly under 3317.4300.

Overpayments

Comment on notice of overpayment

The Department received comments suggesting that the Department consider communications between the employer and employee when determining whether overpayment has occurred.

Agency Response: The Department determined that these suggestions are outside the scope of the proposed rules but will consider them in program design.

Modifying Benefits Schedules and Reporting Additional Income

Comments on schedule adherence

The Department received comments expressing concerns from employers about administering Intermittent Leave schedules and that employers should be involved in setting schedules.

Agency Response: The Department determined that these suggestions are outside the scope of the proposed rules but will consider them in program design.

Comments on ending a leave early

The Department received a comment suggesting it is unrealistic to require seven days' notice before someone returns to work and that covered individuals should be able to return to work immediately if the employer agrees.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and revised the proposed rules accordingly under 3317.4600, subpart 3.

Comments on modifying leave type and schedule

The Department received comments around modification of leave type and schedule. The majority of the comments were supportive of having rules in place on this topic. Some comments suggested more consistency across the proposed rules with respect to the required number of days for providing notice to the Department and employer. A comment asked for clarification on the term "good cause" for modification requests that are submitted within less than 14 days' notice.

Agency Response: The Department determined that these suggestions would help facilitate implementation of the statute, and revised the proposed rule accordingly under 3317.4600.

Intermittent Leave

Comments on calculating benefits for intermittent leave

The Department received a comment in support of basing the replacement rate "on the hours worked in a typical work week."

Agency Response: The Department agrees with the comment and made no changes to the proposed rule.

Comments on the definition of "reasonable effort"

The Department received comments about the proposed definition of "reasonable effort and undue hardship." Some comments suggested a broader definition of "undue hardship" that aligns with the Americans with Disabilities Act (ADA). Other comments suggested a minimum leave increment of at least one full day to make it easier to coordinate, especially for small employers. There is also a comment suggesting additional information be posted on the website to clarify the definition of "reasonable effort" to contemplate reasonableness from the employer's viewpoint.

Agency Response: The Department agrees that some definitional changes suggested in the comments would help facilitate implementation of the statute and revised the proposed rules accordingly under 3317.4700. The Department disagrees with the suggestion to adopt a broader definition of "undue hardship" to align with the ADA's definition. It would be overly broad and would focus on accommodations instead of scheduling. The Department determined that the existing statute sufficiently addresses the issue of minimum leave increments under Minnesota Statutes, section 268B.04, subdivision 6a, and that a proposed rule is not needed.

Comments on disagreements between employees and employers

The Department received comments suggesting the employer should have an opportunity to "object" to DEED when an employer and its employee disagree as to the proposed intermittent leave schedule.

Agency Response: The Department appreciates the comments about having a process in place to address disagreements between employers and employees in this respect. To better implement the statute, 3317.4700, subpart 3 of the proposed rules details a process by which an employer may file a dispute to the commissioner when the employer believes an employee has not made a reasonable effort to provide proper notice.

Benefit Payments

Comments on benefits calculation

The Department received comments under this topic stressing the importance of swift payment processing.

Agency Response: The Department appreciates these comments and determined that the proposed rule best implements the statute by providing the most realistic timeframe for payment processing and made no changes to the proposed rule.

Comments on backdating of application

The Department received a comment in support of the proposed rule regarding backdating of application.

Agency Response: The Department agrees with the comment and made no changes to the proposed rule.

Comments on payment of benefits after death

The Department received comments suggesting that family caretaking benefits should be allowed to continue for one week following the death of the person being cared for to support the responsibilities and grief commonly experienced at the end of life. One comment disagreed with extending benefits beyond the death of a family member, stating that the program was not created for bereavement leave and that there are actuarial implications to consider. Another comment suggested a requirement to notify the Department when a covered individual dies.

Agency Response: The suggestion regarding continuing family caretaking benefits beyond the death of the person being cared for would require a statutory change and is outside the scope of the proposed rules. The Department is doing additional research on this topic. Additionally, the Department determined that the proposed rules under 3317.4600 address the suggested notification requirement related to modifications applies upon the death of a covered individual.

Comments on payment of benefits after retirement/resignation

A comment suggested the Department define what happens to benefits when a covered individual retires/resigns from employment.

Agency Response: The Department determined that this suggestion would require a statutory amendment and is outside the scope of the proposed rules. The Department made no changes to the proposed rules.

Comments on offset of benefits received from other states

The Department received a comment suggesting that offsetting an employee's benefits paid by the State of Minnesota by any benefits received from other states may not be necessary and hard to implement.

Agency Response: The Department decided to keep the pertinent rule as proposed under 3317.4500 because it best implements the statute and was made specifically to address joint employment across states.

Private Plans

Comments on amendments to approved private plans

The Department received several comments suggesting the Department clarify the timeline to submit amendments to approved private plans. Another comment suggested the Department adopt a rule specifying amendments are only required for “substantive” changes.

Agency Response: The Department determined that the suggestions regarding timeline would help facilitate implementation of the statute, and revised the proposed rules accordingly under 3317.5000, subpart 1. Additionally, the Department conferred with the Department of Commerce regarding the latter’s process to review amendments on “substantive” changes and has likewise revised the proposed rules.

Comments on effective dates of voluntary terminations of private plans

The Department received a comment suggesting self-insured employers set effective dates for voluntary private plan termination at the end of a calendar quarter.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and proposed a rule under 3317.5000, subpart 2.

Comments on surety bond collection

One comment suggested adding a rule stating that the Department has the right to collect against surety bonds when a self-insured private plan is involuntarily terminated.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and proposed a rule under 3317.5000, subpart 3.

Comments on private plan reporting

The Department received comments on private plan reporting requirements, including recommendations on report components and submission dates. Commenters were supportive of further guidance, pointing to examples involving mid-year or quarterly changes.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and revised the proposed rules accordingly under 3317.5000, subpart 4.

Comments on premium payments prior to the effective date of approved private plans

One comment suggested an employer should be liable to the Department for premiums on wages paid between the date of application until the effective date of the approved private plan.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and proposed a rule under 3317.5000, subpart 5.

Comments on notice of coverage

The Department received a comment suggesting the Department create a requirement for employers to notify their employees of the coverage available to them under the employer’s private plan.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5100.

Comments on timeline for notice of coverage

The Department received a comment suggesting the Department make rules regarding timeline requirements for notice of coverage under a private plan.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5100.

Comments on notice of termination of a private plan

The Department received a comment suggesting the Department make rules regarding an employer's obligation to provide notice to employees about any termination of a private plan.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5100.

Comments on private plan records retention and confidentiality

The Department received a comment suggesting a rule that requires a self-insured employer or private plan insurer to adhere to federal privacy laws and the Minnesota Government Data Practices Act regarding data related to Paid Leave benefits.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5200.

Comments on employee access to private claim information

The Department received a comment suggesting a self-insured employer or private plan insurer provide a covered individual, upon request and free of charge, access to and copies of, all documents, records, and other information relevant to the covered individual's claim for Paid Leave benefits.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5300.

Comments on intermittent leaves administered by private plans

The Department proposed a rule regarding the process a self-insured employer or private plan insurer must follow to calculate an applicant's benefit amount for Intermittent leave. The Department received comments asking for additional information regarding this process for self-insured employers and private plan insurers using fixed 12-month benefit periods.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and proposed a rule under 3317.5400.

Caring Leave

Comments on certification requirements

The Department proposed rules clarifying the certification requirements for an applicant seeking caring leave. The Department received a comment requesting additional information about these requirements, recognizing Green Card recipients and new Americans may be wary to disclose information that could potentially jeopardize a family member's current or potential status.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute, and revised the proposed rule accordingly under 3317.6000, subpart 1.

Comments on multiple applicants

The Department proposed rules clarifying that the same health care provider must certify leave requests when more than one applicant requests leave for the same individual. One comment on this topic suggested that the Department should avoid making a rule that would require applicants to compromise their privacy or create undue administrative burden for the program. Another comment suggested a rule to ensure multiple individuals are not receiving benefits to care for the same individual.

Agency Response: The Department agrees that the suggestions to protect applicant privacy and minimize administrative burden are important, but that these suggestions would be better addressed through internal processes than through rules. The Department agrees the program needs to have sufficient controls and processes to ensure the benefits only go to individuals that qualify. The Department revised the pertinent rules to support better program implementation. The statute does not presently preclude multiple individuals from caring for a single person. It is plausible and allowable for multiple people to receive benefits to care for the same individual if it is deemed medically necessary.

Comments on attestation to relationship with family member requiring Caring Leave

The Department received a comment suggesting the Department expand the proposed rule to require “proof of personal relationship” through the submission of specific documents. Another comment expressed concerns that the definition of “family member” under Minnesota Statutes, section 268B.01, subdivision 23 differs from the definition of “family” in the FMLA. The Department also received comments seeking clarification as to whether childcare is covered as part of family medical leave.

Agency Response: The suggestion regarding specific documents as proof of personal relationship would create a significant administrative burden for applicants, and the proof standard could be highly subjective. The Department decided not to make changes to the proposed rules in this area but will explore additional identity verification measures in the design of the program to promote program integrity. The suggestion to change the statutory definition of “family member” would require a statutory amendment and is outside the scope of the proposed rules. The Department determined that the proposed rules do not need to provide additional information as to whether childcare is covered under the Paid Leave program, because the statutory language on eligibility speaks for itself.

Small Employer Grants

Comments on definitions

The Department’s proposed rules provide additional information on the definition of the following terms: “temporary worker” and “wage-related costs.” The Department received comments recommending the inclusion of costs associated with backfilling an employee through a temporary or permanent hire to these definitions.

Agency Response: The Department determined that this suggestion would help facilitate implementation of the statute and revised the proposed rule accordingly under 3317.7000.

Comments on employee count calculation

The Department received comments requesting rules clarifying employee count calculation.

Agency Response: The Department determined that the proposed rules do not need to provide additional information on employee count calculation, because Minnesota Statutes, section 268B.29, paragraph (a) has provided the necessary guidance.

Comments on equity

The Department received comments that the grant program will not support all small businesses because of the way “small business” is defined in the statute, that a “first-received, first-processed” application process may create barriers for some

businesses, and that the amount of funds appropriated for this program will be insufficient to meet the needs of small businesses.

Agency Response: The Department [determined that](#) amending the definition of “small business” [would require a statutory amendment](#) and is outside the scope of the proposed rules. The Department agrees that the equity concerns raised are important to better implement the statute and will explore avenues other than rulemaking, such as through grants administration, to address equity concerns.

Safety Leave

Comments on certifying parties

The Department received many comments about certifying parties for Safety Leave. One comment requested that the Department further clarify the definition of “referee.” A majority of the comments requested that the rules designate additional entities, such as civilian employees of police stations, as certifying parties.

Agency Response: The Department determined that defining the term “referee” would help facilitate implementation of the statute. The Department revised the proposed rule accordingly under 3317.8000. The existing statute and the rules as proposed sufficiently address the scope of certifying parties.

Comments on alternative documentation

The Department received comments in support of its proposed rules under 3317.8000 that the Department may accept alternative types of documentation to certify Safety Leave.

Agency Response: The Department agrees with the comments and made no changes to the proposed rule.

Comments on definitions of “safety leave”

The Department received a comment requesting clarification as to the meaning of the phrase “of the applicant or applicant’s family member” under Minnesota Statutes, section 268B.01, subdivision 34.

Agency Response: The Department determined the statutory language speaks for itself and that a rule on this issue is not needed at this time.

Comments on relocation

The Department received comments requesting clarification on the term “relocation” as used in Minnesota Statutes, section 268B.01, subdivision 34(4).

Agency Response: The Department appreciates these comments and will explore ways to provide further clarification on this in program design.

Comments on alleged perpetrators

The Department received comments requesting clarification as to whether alleged perpetrators are eligible to receive Safety Leave.

Agency Response: After consideration, [the Department decided that these suggestions are outside the scope of the proposed rules at this time.](#)

Job Protections

Comments on protections for part-time workers

The Department received a comment that job protections should not promise full-time employees the right to return to a part-time position.

Agency Response: The Department has not proposed a rule on this issue because it is already addressed under Minnesota Statutes, section 268B.09.

Comments on staffing companies and subcontracted employees

The Department received comments requesting clarification on employment protections for employees hired through staffing companies and subcontracted workers.

Agency Response: The Department has decided not to propose a rule on this topic because [Minnesota Statutes, section 268B.09](#) already addresses employment protections for employees of a tax-paying employer.

Remote Working Agreements

The Department received comments that were generally against the proposed rule on remote working agreements because commentators felt the proposed rule was unclear, unnecessary and would be difficult to implement.

Agency Response: The Department agrees with the suggestions and has decided not to include provisions regarding remote working agreements in the proposed rules.

Concurrent Leaves

The Department received comments requesting clarification on the utilization of multiple types of leave at once, also known as “concurrent leaves.”

Agency Response: The Department decided not to make a rule on this topic because it has been addressed under Minnesota Statutes, section 268B.27 and any expansion of the enumerated other leaves and benefits that impact Paid Leave allotments and benefits would require a statutory amendment.

Wages Definition

The Department received several comments requesting clarification on the definition of “wages.”

Agency Response: The Department decided not to propose a rule on this topic because this term is defined under Minnesota Statutes, section 268B.01, subdivision 47.

Serious Health Conditions and Other Qualifying Events

The Department received comments related to whether the Department should create a list of serious health conditions and other qualifying events. A majority of the comments suggested the Department should not create such a list because it could limit provider flexibility, prevent leave for pre-diagnosis care and tests, and lead to other unintended consequences.

Agency Response: The Department agrees with the majority of commenters and has decided not to propose a rule on this topic at this time.

Public Employee Retirement Association (PERA) Eligibility

The Department received comments requesting rules be developed to clarify how earnings from the Paid Leave program may impact a public employee's retirement credits through PERA.

Agency Response: The Department appreciates these comments and will further explore what is needed on this topic.

Hearings and Appeals

The Department received comments requesting clarification on the hearings and appeals process.

Agency Response: The Department decided that these issues are outside the scope of the proposed rules because these suggestions are either addressed in Minnesota Statute, section 268B.081, or can be addressed through internal processes.

Comments Unrelated to Rulemaking

The Department also received a number of comments that were not directly related to rulemaking in that they spoke to concerns with the Paid Leave statute or were more focused on the Paid Leave program's business process or system design. The Department has carefully analyzed these comments and triaged them to other areas of the Department for consideration outside of the rulemaking process.