



## Response to Public Comments taken between November 25, 2024, and January 3, 2025

### 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 Department conducted an initial public comment period between January 22 and July 10, 2024. The Department responded to comments gathered from that process that required an agency response. Where appropriate, the Department incorporated suggestions from those comments in its drafting of the proposed rules that were published in the State Register on November 25, 2024 (“proposed rules”).

The proposed rules provide additional clarification on a variety of topics necessary to implement the provisions of the Minnesota Paid Leave Law, 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, application processing, changes to benefits, and dispute resolution.

The Department conducted a public comment period to gather feedback on the proposed rules published in the State Register. The Department accepted public comments through the Office of Administrative Hearings (OAH) website between November 25, 2024, and January 3, 2025, and collected more than 130 written comments from 21 different organizations.

#### 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 section titles of the proposed rules.

### Comments in Support

The Department received comments from 7 organizations appreciating the Department’s inclusion of common-sense clarifications in the proposed rules on the following topics: Health care provider definition (3317.0015, subpart 7); “Reasonable effort” definition (3317.4700, subpart 2); Private plan reporting requirements (3317.5000, subpart 4); Private plan coverage effective dates (3317.5000, subpart 5); Private plan notice of coverage requirements (3317.5100); Private plan records retention and confidentiality (3317.5200); Employee access to private plan claim information (3317.5300); Attestation of relationship with family member requiring caring leave (3317.6100); and Safety leave certification (3317.8000, subpart 1(H)).

**Agency Response:** The Department appreciates these comments and generally made no changes to the rules as proposed. Some sections of the proposed rules related to Private Plans were revised based on additional feedback, which are separately addressed below.

## Covered Individual

### Comments on definition

The Department received seven comments suggesting the definition of “covered individual” at 3317.0015, subpart 5 of the proposed rules be changed because it is different from the definition of the same term under Minnesota Statutes, section 268B.01, subdivision 15(a).

**Agency Response:** The Department agrees with the comments. The Department decided to remove the definition of “covered individual” from the proposed rules at 3317.0015 because this term is already properly defined in Minnesota Statutes, section 268B.01, subdivision 15a.

## Health Care Providers

### Comments on definition

The Department received two comments suggesting the Department include “acting within their scope of practice and within an existing patient care relationship” to the definition of health care provider at 3317.0015, subpart 7.

**Agency Response:** The Department determined that scope of practice is addressed in the definition of “health care provider” under Minnesota Statutes, section 268B.01, subdivision 24, and need not be addressed in the rules.

### Comments on healthcare provider certification

The Department received two comments asking for clarity on the forms that will be used for health care provider certification as required in 3317.2000. One comment suggested streamlining the form for both in-state and out-of-state healthcare providers. Another comment asked for clarity on the timeline and employer notification requirements when the commissioner requests additional information from health care providers to determine eligibility for benefits.

**Agency response:** The Department appreciates the comments on the certification form and will explore ways to incorporate them in program design. The Department disagrees that an additional rule on timeline and employer notification is needed, because timeline and notification requirements are addressed under Minnesota Statutes, section 268B.07, subdivision 2.

## Seasonal Employment

### Comments on definition of “receipts”

One commenter suggested that DEED should consider a definition of “receipts” that is based on individual business segments or the entirety of the business, whichever the business chooses.

**Agency response:** The Department disagrees that the definition of “receipts” should be modified for the purposes of determining an employer’s seasonality, because the definition of “employer” addressed in Minnesota Statutes, section 268B.01, subdivision 18 does not include business segments. Assuming an employer meets the receipts requirements under Minnesota Statutes, section 268B.01, subdivision 35, an employee may be classified as a “seasonal employee” if their primary line of work is in hospitality. The proposed rule at 3317.3000, subpart 2 specifies that an employee’s primary line of work is considered to be hospitality if the employer operates a hospitality business or hospitality business segment meeting one or more of the definitions under Minnesota Statutes, section 268B.01, subdivision 35.

## Comments on definition of “seasonal employee”

One commenter suggested the Department should add an additional subpart to 3317.3000 to clarify that the Department will allow the employer to use gross receipts from any six-month segment the employer chooses. Another commenter suggested that the definition of “seasonal employee” should be expanded to all seasonal business staff like golf courses, swimming pool operations, and ice rinks.

**Agency response:** The Department agrees with the first commenter that the six months need not be consecutive. The Department disagrees that additional rules are needed because the ability of the employer to use any six-month segment is already addressed in the definition of “seasonal employee” under Minnesota Statutes, section 268B.01, subdivision 35(a). To the extent the second commenter seeks to expand the statutory definition of “seasonal employee” under Minnesota Statutes, section 268B.01, subdivision 35(a)-(b), the proposed change would require a statutory amendment and is outside the scope of the proposed rules.

## Comments on the counting of 150 days

One commenter suggested that the Department should count 150 days in the seasonal employment context based on an employee’s workdays rather than calendar days.

**Agency response:** The Department disagrees with the suggestion because Minnesota Statutes, section 268B.01 subdivision 35(a) bases the definition of “seasonal employee” on days employed, not days worked.

## Employer Notification

### Comments on validation of covered individuals' notification to employers

One commenter stated that it would be useful to the commissioner and the employer if the Department established rules stating that employees were required or encouraged to provide additional information to allow the employer to verify that notice was provided. Two commenters specifically requested that rules be created to require that employees submit a copy of the notice to the Department when the notice is provided electronically or in writing.

**Agency response:** The Department determined that employees’ compliance with employers’ notification policies is addressed under Minnesota Statutes, section 268B.085, subdivision 1(e) and need not be addressed in the rules.

### Comments on failure to notify employer

Six commenters recommended rules clarifying that claim processing continues during the seven-day period for an employer to dispute an employee’s provision of notice. These commenters additionally requested that rules be created to require that employees be notified when an employer’s dispute is filed. Lastly, these commenters requested rules outlining the Department’s review process for such disputes.

One commenter suggested that applications should be delayed when employees fail to provide notice to support shared accountability for the needs of individuals and businesses.

Four commenters suggested that, for cases in which employees fail to notify their employers of their intent to take leave, the Department should adopt a rule that withholds the full amount of Paid Leave benefits for the first seven days of any claim with a duration longer than 14 days. If the claim is 14 days or less, the Department should withhold 50 percent of the total benefit.

**Agency response:** Minnesota Statutes, section 268B.085, subdivision 1 states that employees must provide employers advance notice before leave is to begin. Delaying the determination of an application during a notification dispute as set forth in the proposed rule at 3317.4100, subpart 2 will help implement the statute. While the determination of an application is delayed until the commissioner finds the covered individual has provided the required notice to their employer, nothing in the proposed rule or Minnesota Statutes, section 268B prevents the Department from continuing to process a claim up to the point of determination. Instead of

amending the proposed rule at 3317.4100, subpart 2, the Department will consider comments related to claims processing continuation when designing its program workflow of the adjudication process.

Additionally, the Department determined that the rule as proposed at 3317.4100, subpart 2 is the most appropriate approach to implement the payment of benefits requirements set forth under Minnesota Statutes, section 268B.03, subdivision 1. To the extent the comment regarding withholding benefits payments seeks to impose more restrictions on Paid Leave benefit payments than what the statute provides, such a revision would require a statutory amendment and is outside the scope of the proposed rules.

### Comments on speed and mode of notification transmission

Five commenters recommended that notices be provided in real time whenever possible and that the Department should prioritize developing an electronic means of transmitting this information between the Department, the applicant/employee, and the employer(s).

**Agency response:** The Department determined that the suggestions regarding the means and speed of information sharing are outside the scope of the proposed rules but will consider them in program design.

One commenter suggested that the Department should further establish a clear ability and process for employers to identify which individual(s) and/or department(s) within their organizations should receive a covered individual's request for leave as well as the commissioner's attestation. The commenter further suggested that employers should have the right to instruct the commissioner where and how to send the attestation and failing to do so would mean there has been no delivery or receipt.

**Agency response:** The Department determined that the suggestions regarding designating points of contact are outside the scope of the proposed rules but will consider them in program design. The Department also determined that the matter of receipt of notice is addressed under Minnesota Statutes, section 268B.085, subdivision 1(e) and need not be addressed in the rules.

### Comments on sharing leave information between employees and employers

Five commenters encouraged the Department to share with the employer the general category of leave requested by the employee, whether it is medical, bonding, family, safety, or qualifying exigency. One of these commenters stressed that this type of information may help an employer aid in fraud prevention or abuse of the program without compromising the applicant's privacy or running afoul of state or federal data regulations.

One commenter suggested the proposed rules state that an employer's right to notice remains throughout the leave process. The commenter further suggested that the employer's right to request documentation, such as medical certification, be protected.

**Agency response:** The Department acknowledges that the comments encouraging information sharing and fraud prevention are important goals for program administration. They are outside the scope of the proposed rules, but the Department will consider them in program design. Additionally, the employer's right to notice is addressed under Minnesota Statutes, section 268B.085, subdivision 1(a), and the Department has proposed rules at 3317.4600 setting forth when employers must be notified of changes. The Department determined that an employer's right to a copy of the certification is addressed under Minnesota Statutes, section 268B.085, subdivision 1(f) and need not be addressed in the rules.

### Comments on employer timeline to dispute covered individual's notification

One commenter stated that the seven-calendar-day turnaround under the proposed rule at 3317.4100, subpart 2 for employers to respond to inquiries is not realistic.

**Agency response:** The Department appreciates the concerns shared by the commenter. The Department has determined the proposed rule at 3317.4100 contains the most appropriate timeline. This timeline is designed to

strike a balance between allowing sufficient time for employers to respond and preventing undue delays in benefit payments.

## Supplemental Benefits

### Comments on the designation of supplemental benefits

Six commenters suggested that additional clarification be added to the proposed rule at 3317.4200 to specify that once an employer has chosen to offer supplemental benefits the power lies with the employee to decide whether to receive those benefits in accordance with 268B.06, Subd 5 (b). Another commenter recommended “reiterating the statutory language concerning employees’ choice to use supplemental benefits so that it is clear that the rule is not countermanding this legislative priority.”

One commenter expressed agreement with the pertinent rule language as currently proposed.

**Agency response:** The Department determined that the right of an employee to decide whether to receive supplemental benefits is addressed under Minnesota Statutes, section 268B.06, subdivision 5(b). The Department decided to add language to the proposed rule at 3317.4200 aligned to that understanding: Nothing in this rule may be construed to allow an employer to require an employee to accept supplemental benefits.

## Fraud

Eight commenters suggested changes to the rule at 3317.4300 to promote consistency. All of these commenters suggested qualifying “report” with the term “good faith.” Seven of these commenters further suggested adding a definition of “good faith.” One commenter suggested changing the word “must” to “may.” Another commenter observed that there should be strong protections against fraud.

**Agency Response:** The Department agrees that the addition of the qualifier “good faith” would help resolve concerns around consistency within the rules and help implement Minnesota Statutes, section 268B.09. The Department revised the proposed rule accordingly under 3317.4300.

The Department determined a definition of “good faith” in the rules is not necessary because this term is already defined under Minnesota Statutes, section 268B.09, subdivision 1(b)(2). The Department decided not to change the language from “must” to “may” because it would make the mandatory rule language less clear.

## Suspending Payments

The Department received five comments suggesting changes to the language around suspending payments. Commenters suggested there should be language that payments are not suspended when an unintentional mistake occurs. Commenters also argued that “a preponderance of the evidence” is too low of a bar and that “clear and convincing” would be a more appropriate evidentiary standard. Finally, commenters suggested three months after correction is unreasonable given the conditions under which a worker applicant would need program benefits and 30 days would be more appropriate.

Two commenters disagreed and felt the existing language was reasonable, suggesting that “a preponderance of the evidence” is the most commonly used standard of proof in civil matters. They additionally stated that, to promote fairness, the same standard of proof should apply to employers and employees alike.

**Agency Response:** The Department decided not to change the evidentiary standard from “a preponderance of the evidence” to “clear and convincing evidence.” A heightened evidentiary standard of “clear and convincing evidence” to suspend payments would limit the Department’s ability to act promptly in its fraud prevention/mitigation efforts.

The Department determined that changing the suspension period after correction from “three months” to “30 days” would improve program implementation and has revised the proposed rule at 3317.4310 accordingly.

## Overpayments

Seven commenters requested that the Department provide additional clarification to the proposed rule at 3317.4400 regarding notification and collection of overpayments. Specifically, two commenters wondered how the Department would address overpayments in the case of supplemental benefits.

**Agency Response:** The Department appreciates the suggestions related to the handling of overpayments. The Department determined that this matter is better addressed through program design and will consider the suggestions during that process.

## Schedules and Modifications

### Comments on process to modify leave schedule

The Department received one comment suggesting that the proposed rule at 3317.4600 be streamlined and/or simplified into a single section or paragraph.

Five commenters suggested that 3317.4600 adds potentially confusing, burdensome, and punitive elements to the process that may keep worker applicants facing challenging life events from accessing their earned Paid Leave benefits. The commenters suggested that, at a minimum, the Department should make every effort possible to create expedited processes for “schedule changes” to prevent harms to applicants and their family members.

**Agency response:** The Department disagrees with the structural suggestion to consolidate the subparts and subsections in proposed rule at 3317.4600 into a single section or paragraph and determined that the proposed rule in its current structure is the most appropriate approach to help facilitate implementation of the statute.

The Department agrees that the requirements for requesting modifications to approved leaves should minimize barriers to applicants facing challenging life events. However, the proposed rules at 3317.4600 are necessary for ensuring the program pays benefits for the correct dates. One way to minimize barriers while ensuring program integrity is to exercise flexibility in certification requirements for modifying approved leaves. After an employee’s initial application for benefits has been approved based on the certification requirements under Minnesota Statutes, section 268B.06, subdivision 3, the Department has discretion to determine what documentation is sufficient to justify subsequent modifications of the approved leave. The Department revised 3317.4600, subparts 4 through 7(C)(4) to require “documentation sufficient to support” a requested modification rather than “an updated certification.” This will allow the Department to require up to a full certification when necessary and use its discretion to exercise flexibility where possible, such as when an employee requests a change to an intermittent leave schedule for the same medical condition and for the same number of hours per week. The Department will also take the suggestions into consideration in its process design.

The Department agrees that it is important to process schedule changes quickly and will consider this during program design.

### Comments on notice to employers to modify leave dates

The Department received six comments that the 14 calendar days reporting requirements for changes to approved leave at 3317.4600, subparts 4 through 7 is unnecessary and conflicts with Minnesota Statute, section 268B.085.1(a), which states: “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.” The commenters suggested that, assuming a rule is necessary, the Department should include the “as soon as practicable” language articulated in the statute.

The Department received three comments in support of the 14 calendar days reporting requirements because they feel employers need notice and an ability to plan for both employees being gone and employees coming back.

Four commenters recommended the Department immediately notify employers when a leave modification request is submitted.

Another commenter recommended that employees should provide more information than merely the date on which notice was provided to the employer for the commissioner and employer to verify that notice was properly provided.

**Agency response:** The Department agrees that adding the “as soon as practicable” language to the proposed rule at 3317.4600 would facilitate implementation of the statute. This language is consistent with the notice requirements set forth under Minnesota Statutes, section 268B.085. The Department revised the proposed rule accordingly. The Department agrees with the commenters that employers should be notified by the Department about modifications to a leave and will consider this suggestion when designing its program workflow.

The Department agrees that the information requirements for when an employee notifies an employer should be consistent throughout the rules. The proposed rule at 3317.4600, subparts 4 through 7, was modified to be consistent with the employer notification requirements set forth under 3317.4100, subpart 1.

### Comments on schedule adherence

The Department received five comments that the proposed rule at 3317.4600, subpart 1(B) creates new “penalties” or consequences within the program, which exceeds rulemaking authority.

**Agency response:** The Department agrees that subparts 1(A) and (C), as proposed, are sufficient to help implement Minnesota Statutes, section 268B.085, subdivision 3 and that subpart (B) should be deleted. The Department revised the proposed rule accordingly under 3317.4600.

### Comments on changing intermittent leave schedules

One commenter suggested the Department remove the entirety of the proposed rule at 3317.4600, subpart 5, stating that that subpart essentially provides employees with a “narrowly prescriptive method of requesting a change to an intermittent leave schedule” and provides employers with an opportunity to “appeal” an employee’s proposed leave schedule outside the statute’s appeal process.

**Agency response:** Rule 3317.4600, subpart 5 is necessary to keep the Department informed of when leave schedules are changing in order for it to issue payments for the correct dates. One way to make the process less prescriptive while ensuring program integrity is to exercise flexibility in certification requirements for modifying approved leaves. After an employee’s initial application for benefits has been approved based on the certification requirements under Minnesota Statutes, section 268B.06, subdivision 3, the Department has discretion to determine what documentation is sufficient to justify subsequent modifications of the approved leave. Instead of requiring an updated certification for changes to intermittent leave schedules in all cases, the Department decided to revise the rule to require documentation sufficient to support the need for a change.

The Department disagrees that the proposed rule at 3317.4600, subpart 5 allows employers to appeal the proposed leave schedule. Rather, the proposed rule provides employers with an opportunity to dispute whether notice has been provided for changes to an employee’s proposed leave schedule.

### Comments on notification disputes

Two commenters expressed concern that the proposed rule at 3317.4600 does not provide enough detail regarding the commissioner’s creation of a process for “impartial review” of notification disputes. The commenters requested that this process be further outlined in the rules.

**Agency response:** The Department determined that this is outside the scope of the proposed rules. The impartial review process will be further addressed in program design.

## Comments on ending a leave early

Eight commenters suggested employers need more than one day's notice when employees elect to end an approved leave early. Commenters suggested that an employee be required to provide between 7 to 21 days' advance notice to their employer if they intend to end a leave early.

Five commenters suggested that the proposed rule at 3317.4600, subpart 3 should also specify that it shall be the employer's sole discretion as to whether to reinstate the employee and to what position the employee is to return to work prior to the end of the approved claim end date.

**Agency response:** The Department agrees that one day's notice may not be sufficient time to reinstate an employee to their prior position such as when a temporary worker has been hired to cover the scheduled absence, or when work schedules are set in advance. The Department decided to align the proposed rule's length of notice window when an employee returns from leave early with the FMLA, at 29 Code of Federal Regulations, section 825.311(c). The Department revised the proposed rule at 3317.4600, subpart 3 to two business days, where foreseeable.

## Intermittent Leave

### Comments on schedules

One commenter suggested that the Department should create rules to address whether the statute permits only full workdays off work during intermittent leave or less than full workdays.

Four commenters suggested that, for small employers, the burden to show intermittent leave schedule does not disrupt unduly the operations of the employer should fall on the employee.

**Agency Response:** The Department determined that the length of intermittent leave increments is addressed under Minnesota Statutes, section 268B.04, subdivision 6(a) and need not be addressed in the rules. Additionally, the Department determined that the requirement for an employee to make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer is addressed under Minnesota Statutes, section 268B.085, subdivision 3(c). To the extent the comment suggests the introduction of a burden-shifting scheme for small employers, it would require a statutory amendment and is outside the scope of the proposed rules.

### Comments on the definition of "reasonable effort"

One commenter suggested that the proposed definition of "reasonable effort" be modified to include timely communication by the employee.

Five commenters suggested that the proposed definition of "reasonable effort" should include the following language from FMLA guidelines: "the employee must make a reasonable effort to schedule the leave so as not to disrupt unduly the employer's operations." The commenters further suggested that the rules define "disrupt unduly" according to the ADA's definition of "undue hardship."

**Agency Response:** The Department determined that the timing requirement for providing notice to the employer is addressed by Minnesota Statutes, section 268B.085, subdivision 1(a) and need not be addressed in the rules. Additionally, the Department determined that the requirement for an employee to make a reasonable effort to schedule intermittent leave so as not to disrupt unduly the operations of the employer is addressed under Minnesota Statutes, section 268B.085, subdivision 3(c) and need not be addressed in rule. The Department disagrees that adding the ADA's definition of "undue hardship" would be appropriate as that definition is overly broad for purposes of the Paid Leave program and focuses on accommodations instead of scheduling.



## Comments on disagreements between employees and employers

One commenter expressed concern that the proposed rule provides the employer with no recourse when an employee does not make a reasonable effort to share the need for a leave and a proposed leave schedule with their employer or when a health care provider's certification does not support the leave schedule requested by the employee. This commenter suggested that the rule be revised to include additional language describing when an employer may file a dispute with the commissioner.

Another commenter suggested that, as drafted, the proposed rule does not provide enough clarity on what will happen when intermittent leave schedule disputes are filed.

**Agency Response:** The Department disagrees that additional language is necessary to address the situation when a health care provider's certification does not support the leave schedule requested by the employee. The proposed rule at 3317.4700, subpart 3 sets forth the process through which an employer may file a dispute with the commissioner when the employer believes an employee has not made a reasonable effort. The proposed rule authorizes the commissioner to provide a process for impartial review of the employer's dispute. The Department determined that further details regarding the review process will be addressed in program design.

## Backdating

One commenter asked the Department to further define and clarify what constitutes "good cause" in preventing timely submission of the application. Specifically, the commenter was concerned about medical delays and patients requiring supportive decision making.

**Agency Response:** The Department agrees with the suggestions that "good cause" should include a variety of factors outside an applicant's control. The proposed rule at 3317.4920 is clear that "good cause" is determined based on the circumstances of a particular case. The Department determined that a definition of "good cause" is not necessary because that phrase has a common understanding, and it may not be possible to specifically identify all the different circumstances that could constitute good cause. The Department also notes that both the Federal Rules of Civil Procedure and the Minnesota Rules of Civil Procedure use the term "good cause" without defining the term. No changes were made to the proposed rule.

## Private Plans

### Comments on amendments

The Department received two comments asking to change the language in the proposed rule at 3317.5000, subpart 1 from "any amendment" to "all substantive amendments" to be consistent with the term used earlier in the same subpart. Another comment proposed adding "private plan insured employer" to the list of entities required to file substantive amendments to the commissioner.

**Agency Response:** The Department determined that changing the language to "all substantive amendments" ensures consistency of language used in the proposed rule at 3317.5000, subpart 1. The Department determined that adding "private plan insured employer" would help facilitate implementation of the statute. The Department made revisions to the proposed rule at 3317.5000, subpart 1 accordingly.

### Comments on effective dates of voluntary terminations of private plans

The Department received a comment suggesting that the proposed rule at 3317.5000, subpart 2 requiring the establishment of effective dates for voluntary private plan terminations should also apply to private plan insured employers.

**Agency response:** The Department determined that adding the term "private plan insured employer" under subpart 2 of the proposed rule at 3317.5000 would facilitate the implementation of the statute and revised the proposed rule accordingly.

## Comments on private plan reporting

The Department received a comment suggesting modifications to private plan reporting requirements under proposed rule 3317.5000, subpart 4(c) through (e). The commenter further suggested that the term “cases” under subpart (H) and (I) be replaced with “claims” to be consistent with language elsewhere in the rule. Lastly, the commenter suggested the unit of private plans’ reports to be book of business rather than individual employers and requested clarification on the submission deadline set forth in subpart 4.

**Agency response:** The Department determined that the proposed rule at 3317.5000, subpart 4 is consistent with the Department’s annual reporting requirements as set forth under Minnesota Statutes, section 268B.25, as is the use of the term “cases.” The Department corrected an error in 3317.5000, subpart 4 of the proposed rule from “Beginning in 2027” to “Beginning in 2026” regarding the submission deadline of private plan reporting. This revision will facilitate the implementation of reporting requirements set forth under Minnesota Statutes, section 268B.25, which provide that the first annual report, which would cover the previous fiscal year, is to be published beginning on or before January 1, 2027. The Department determined that the suggestion regarding the unit of reports is outside the scope of the proposed rules but will consider this in program design.

## Comments on private plan records retention and confidentiality

The Department received a comment that suggested modifying the proposed rule at 3317.5300 to further define the types of private plan claim information that can be requested by an employee.

**Agency response:** The Department determined this concern is addressed under the data privacy provisions of Minnesota Statutes, section 268B.30 and need not be addressed in the rules.

## Comments on employee access to private plan claim information

The Department received a comment requesting the proposed rule at 3317.5300 be modified from “within ten business days of a request” to “within ten business days of receipt of a request.”

**Agency response:** The Department determined the suggested modification to the proposed rule language at 3317.5300 would add clarity to the rule language and help facilitate implementation of the statute. The Department revised the proposed rule accordingly.

## Comments on employer obligations after termination of private plan

The Department received a comment asking for clarity on how the state plan provides support to employees whose employers’ private plans are involuntarily terminated and/or have failed to pay premiums.

**Agency response:** The Department determined that this matter is addressed in Minnesota Statutes, sections 268B.10, 268B.15, and 268B.19(c) and need not be addressed in the rules.

## Caring Leave

One commenter suggested the Department should make additional rules that a second caregiver-applicant may only take leave for the minimum period of time required to complete specific activities where more than one caregiver is needed to provide care. They also suggested the Department should make additional rules that designate an independent third-party medical examiner to verify the need for all applications for caregiving leave.

Another commenter suggested that the Department consider whether employers can impose additional limitations when multiple employees request leave to care for the same family member (such as limiting whether those leaves can be taken simultaneously or subjecting them to a combined maximum). One commenter suggested the Department should require “proof of personal relationship” for applicants who seek leave to care for family members with serious health conditions.

**Agency Response:** The Department determined that the proposed rule at 3317.6000 is the most appropriate approach to implement the certification requirements for caring leave under Minnesota Statutes, section 268B.06, subdivision 3(b). The Department agrees with commenters that program integrity is important. The Department will consider additional measures in program design to safeguard program integrity.

## Small Employer Grants

### Comments on notices

One comment stated that DEED should adopt additional rules that would require notice of the small employer assistance grant program be sent electronically and by mail.

**Agency Response:** Minnesota Statutes, section 268B.29 (e) provides that applications for small employer assistance grant “shall be submitted and processed in a form and manner determined by the commissioner[.]” As such, the Department determined that the manner in which notices are to be provided in the small employer assistance grant program will be considered in program design and administration consistent with the statute.

### Comments on small employers outside the metro

One comment suggested that DEED should consider, on a quarterly basis, setting aside a minimum amount of grant funds for applicants located outside the seven-county metro area to better ensure geographical parity.

**Agency response:** The Department agrees that geographical equity is important and will consider it in program administration consistent with its statutory authority.

### Comments on supplemental financial assistance

One commenter requested that the proposed rules provide a process for small employers to receive supplemental financial assistance without applying for grant funding.

**Agency Response:** The relevant proposed rules at 3317.7000 implement Minnesota Statutes, section 268B.29, which establishes a process for small employers to apply for small employer assistance grants. The Department determined that this suggestion is outside the scope of the proposed rules and made no changes. To the extent the comment seeks to expand the scope of financial assistance authorized by law, that would require a statutory amendment and is outside of the scope of the proposed rules.

## Rule Omissions

### Comments on covered employment

One commenter asked for clarification on the eligibility of elected officials, e.g. city council members, to take Paid Leave.

**Agency response:** The Department determined that a rule is not needed on this topic because the existing definitions of “covered employment,” “employee,” and “employer” in Minnesota Statutes, section 268B.01, subdivisions 15, 17 and 18 address this issue.

### Comments on concurrent leaves

The Department received three comments requesting clarity on the utilization of Paid Leave concurrently with other leave benefits, including the Family and Medical Leave Act (FMLA), short-and long-term disability benefits, and Earned Sick and Safe Time (ESST). One commenter suggested including an employer’s right to dispute an employee’s maximum duration of benefits as determined by the Department if the employee has used both FMLA and Paid Leave.

**Agency Response:** The Department determined a rule is not needed on this topic because concurrent leave has been addressed under Minnesota Statutes, sections 268B.06 and 268B.27. To the extent the comments seek to add an employer’s right beyond what is provided in the statute or expand the scope of concurrently-run leave types, that would require a statutory amendment and is outside the scope of the proposed rules.

### Comments on return-to-work certification

Six commenters recommended the Department include a requirement that an employee provide their employer with documentation similar to a fitness-for-duty certification under 29 Code of Federal Regulations, section 825.312 of the FMLA. One commenter suggested that the Department should make rules that require an employee who is returning from leave to provide a statement that the employee is physically able to perform the functions of the position to which the employee is returning.

Four commenters also suggested that the proposed rules should clarify an employer can offer an employee who is returning from leave alternative reinstatement arrangements, which may include the possibility of returning to a different position, shift or alternate schedule.

**Agency Response:** The Department determined that an employee’s entitlement to be returned to the same position or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment is set forth in Minnesota Statute, section 268B.09, and need not be addressed in the rules. To the extent the comments suggest an expansion of the employer’s rights, that would require a statutory amendment and is outside the scope of the proposed rules.

### Comments on workers’ compensation

Two commenters recommended that the Department include a clarification in the proposed rules as to how workers’ compensation and Minnesota Paid Leave will align.

**Agency Response:** The Department determined that the interaction between workers’ compensation and Minnesota Paid Leave is addressed by Minnesota Statutes, sections 268B.01, subdivision 5, 268B.06, subdivision 6, and 268B.07, subdivision 2, and need not be addressed in the rules.

### Comments on reinstatement

One comment recommended that the Department make a rule establishing a specific period of time for an employee to fulfill the training or licensing requirement referenced in Minnesota Statutes, section 268B.09, subdivision 6(b)(2).

**Agency Response:** The Department determined it is sufficient that Minnesota Statutes, section 268B.09, subdivision 6 provides the employee should be given a reasonable opportunity to meet training requirements.

### Comments Unrelated to Rulemaking

The Department also received a handful of comments that were not directly relevant to rulemaking in that they were regarding Paid Leave statute concerns or were more focused on business process or system design. These comments were analyzed and, where applicable, handed off to other areas of the Department for consideration outside of the rulemaking process.