

HF357 - 0 - Lactating Employees, Pregnancy Accommodations

Chief Author: **Erin Koegel**
 Committee: **Labor, Industry, Veterans and Military Affairs
 Finance and Policy**
 Date Completed: **2/15/2021 9:15:29 AM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Minn Management and
 Budget

State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions shown in the parentheses.

State Cost (Savings)	Biennium			Biennium		
	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Labor and Industry Dept						
General Fund	-	84	34	34	34	34
State Total						
General Fund	-	84	34	34	34	34
Total	-	84	34	34	34	34
Biennial Total			118			68

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Labor and Industry Dept					
General Fund	-	.25	.25	.25	.25
Total	-	.25	.25	.25	.25

Lead LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Christian Larson **Date:** 2/15/2021 9:15:29 AM
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State Cost (Savings) Calculation Details

This table shows direct impact to state government only. Local government impact, if any, is discussed in the narrative. Reductions are shown in parentheses.

*Transfers In/Out and Absorbed Costs are only displayed when reported.

State Cost (Savings) = 1-2		Biennium			Biennium	
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Labor and Industry Dept						
General Fund	-	84	34	34	34	34
Total	-	84	34	34	34	34
	Biennial Total		118			68
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Labor and Industry Dept						
General Fund	-	84	34	34	34	34
Total	-	84	34	34	34	34
	Biennial Total		118			68
2 - Revenues, Transfers In*						
Labor and Industry Dept						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
	Biennial Total		-			-

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State Fiscal Impact	Yes	No
Expenditures	X	
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology	X	
Local Fiscal Impact		X

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Total	-	.25	.25	.25	.25

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Christian Larson **Date:** 2/15/2021 8:32:29 AM
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Total	-	84	34	34	34	34
Biennial Total			118			68
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill amends Minn. Stat. 181.939 to require employers to provide *paid* break time for employees to express breast milk. The bill deletes the provision of the nursing mothers’ law that exempts an employer from the requirement to provide break time if doing so would unduly disrupt the operations of the employer. It also moves the pregnancy accommodation law from 181.9414 to 181.939, which changes the definition of “employer” for purposes of this law to be “a person or entity that employs one or more employees and includes the state and its political subdivisions.” This is the definition that currently applies to the nursing mothers’ law. Finally, this bill changes a “may” to a “shall” regarding the prohibition on employer retaliation for asserting rights under this law.

Assumptions

The Department of Labor & Industry (DLI) assumes initial outreach efforts will be required to educate employers and employees about the expanded pregnancy accommodation and nursing mothers break coverage. DLI estimates this cost to be \$50,000. Outreach costs include printing, translation of materials, and marketing efforts.

DLI assumes it will see an increase in inquires and complaints related to nursing mothers and pregnancy accommodation. Nursing mothers will have the right to paid leave, which likely lead to an increase in complaints. Complaints will also increase due to the deletion of the provision that exempts an employer from the requirement to provide break time if doing so would unduly disrupt the operations of the employer. In addition, this bill will apply the pregnancy accommodations to more pregnant employees than the previous law because the definition of who is covered expands to cover any employee versus previous language that only covered employers with 21 or more employees at one site.

It is hard to know by how much complaints of nursing mothers would increase as a result of the leave needing to be paid and having the employer unable to make an argument that providing the break time will unduly disrupt the operations of the employer. It is also difficult to know how much of an increase we will see in pregnancy accommodation calls and complaints, but we do know that the law will cover an additional 113,900 employers.

It is anticipated that DLI will experience an increase in calls and additional investigations because of the law change. \$34,000 would be additional operating funds for Labor Standards staff to add additional casework to the current level of service while also increasing its outreach capacity related to nursing mothers and pregnancy accommodation.

In calendar year 2019, DLI received at least 240 calls related to the five WESA (Women’s Economic Security Act) subject areas. Two of these areas are modified in this bill. Assuming all calls were equally distributed among topic areas, there were at least 96 calls related to nursing mothers and pregnancy accommodation combined. DLI anticipates this number will at least double given the broader requirements on employers to provide accommodations and paid break time to their

employees. DLI assumes it will receive at least an additional 100 calls related to nursing mothers and pregnancy accommodations per year with an estimated duration of 15 minutes, or approximately 25 hours.

In calendar year 2019, approximately 6.7% of WESA (Women’s Economic Security Act) calls evolved into full investigations. Of the anticipated 100 new calls, DLI estimates 6.7%, or approximately 7, will result in investigations that will require an estimated 40 hours to complete for a total of 280 hours. Total investigator hours equal 305, or approximately 0.15 FTE.

DLI anticipates an additional 0.10 FTE would be needed to maintain outreach and educational communications to employers and employees about their rights and obligations under these laws.

IT Assumptions:

One additional license for DLI’s IT case management system.

Penalties

With the expanded coverage, secondary violations of records penalties or other repeat/willful violations may increase, which could increase revenue for DLI, but this is expected to be minimal. Therefore, revenues are not included in the fiscal estimates above.

Expenditure and/or Revenue Formula

Labor Investigator Sr - MAPE 12L	2022	2023	2024	2025
FTE	0.25	0.25	0.25	0.25
Salary per FTE (midpoint)	66,190	66,190	66,190	66,190
Fringe Benefits (35% of Salary)	23,167	23,167	23,167	23,167
Indirect (22.5% of Salary/Fringe)	20,105	20,105	20,105	20,105
Salary / Fringe / Indirect	27,365	27,365	27,365	27,365
Non-Personnel Services	6,126	6,126	6,126	6,126
Cumulative Cost	33,491	33,491	33,491	33,491

Cumulative Costs	2022	2023	2024	2025
Labor Investigator Sr.	33,491	33,491	33,491	33,491
IT Case Management User License	600	600	600	600
Outreach and Education	50,000	-	-	-
Cumulative Cost	84,091	34,091	34,091	34,091

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

QCEW Data

Agency Contact:

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State Fiscal Impact	Yes	No
Expenditures		X
Fee/Departmental Earnings		X
Tax Revenue		X
Information Technology		X
Local Fiscal Impact		X

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	Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium		
		FY2021	FY2022	FY2023	FY2024	FY2025
Total	-	-	-	-	-	-

LBO Analyst's Comment

I have reviewed this fiscal note for reasonableness of content and consistency with the LBO's Uniform Standards and Procedures.

LBO Signature: Joe Harney **Date:** 2/15/2021 9:05:17 AM
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State Cost (Savings) Calculation Details

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Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Total		-	-	-	-	-
Biennial Total				-		-
2 - Revenues, Transfers In*						
Total		-	-	-	-	-
Biennial Total				-		-

Bill Description

This bill expands Minnesota Statutes section 181.939. Under current law, employers must give nursing mothers reasonable unpaid break time during the workday for the purpose of expressing milk. The breaks must, if possible, run concurrently with the employee’s normal breaks.

The bill changes current law by providing that employees’ compensation cannot be reduced for the time they take for such breaks. In other words, if the employee takes the break during regular work time, they cannot be required to take unpaid leave or use vacation or compensatory time for the time it takes to express milk. Under the bill, the breaks may run concurrently with paid or unpaid break times already provided to the employee. The bill also extends this break time to other lactating employees who may not be nursing.

This bill also repeals Minnesota Statutes section 181.9414 “Pregnancy Accommodations” and adds essentially the same text to Minnesota Statutes section 181.939 as a new subdivision 2. Because the bill maintains the same requirements for pregnancy accommodations as currently exist in section 181.9414, the bill effects no change in an employer’s obligation to provide pregnancy accommodations.

Assumptions

Minnesota Management and Budget (MMB) does not expect there to be appreciable costs to State of Minnesota government agencies attributable to providing breaks to lactating employees under the bill based on the following assumptions:

It is assumed the bill does not require additional paid breaks over and above paid breaks already provided to employees; rather, it requires that employees’ pay will not be reduced although the employee may be expressing milk rather than working. In other words, the time remains paid as regular work time if it would have been regular work time but for the break.

It is assumed that, generally, lactating employees will require an average of 45 minutes per day of break time to express milk during a normal 8:30 AM-5:00 PM work schedule. It is assumed that each break lasts an average of 15 minutes. It is also assumed that, generally, 30 minutes of the break time will occur during employees’ two currently scheduled 15-minute paid breaks, and 15 minutes of the break time will occur during employees’ unpaid 30-minute lunch break. This would result in no additional time away from work than is currently the case.

Even to the extent that the lactation break time may be taken during the employee’s normal work time rather than during the employee’s normal break time, the bill is not expected to result in appreciable costs. An employee who is paid eight hours per day will still be paid eight hours per day although some of that eight hours is spent expressing milk. As a result, the cost to the agency of that employee remains the salary cost of eight hours per day. Because it is assumed that the average amount of total time for the breaks is 45 minutes (some or all of it likely being aligned with an employee’s normal break times), and because a relatively small number of employees would be using this break time during any one period, spread across the entire enterprise (as described below), it is not assumed that such breaks will result in an appreciable

need for replacement workers or result in overtime costs.

The number of employees assumed to be using this break time is based on the usage of the state's Paid Parental Leave (PPL) Policy, which applies to the executive branch, Minnesota State Retirement System, Public Employees Retirement Association, and the Teachers Retirement Association.

Based upon two years of historical SEMA4 HR and payroll system data on number of female employees who recorded PPL in FY 2019 and 2020, approximately 1,050 employees gave birth each year. This figure is 95 percent of the total number of female employees who recorded PPL, as it is assumed 95 percent of female employees taking PPL were the birth parent and the other 5 percent qualified for PPL due to an adoption or as the female non-birth parent. For the purposes of the fiscal note, it is assumed 1,059 female employees will give birth each year, accounting for two years of 0.45 percent annual growth in employee headcount from FY 2020 through FY 2022, which is based on the average growth from FY 2011 through FY 2020 as calculated from the SEMA4 system.

Of the estimated 1,059 eligible employees, it is assumed an average of 683 (64.5 percent) of them are breastfeeding or otherwise lactating and expressing milk for a full nine month period after returning to work at three months post-partum. United States Centers for Disease Control and Prevention (CDC) state-specific data indicates 79.1 percent of Minnesota mothers breastfeed at six months and 49.8 percent continue to breastfeed at one year. A smaller percentage may continue to breastfeed after one year, which is not contemplated in this fiscal note due to lack of available CDC data.

Expenditure and/or Revenue Formula

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

United States Centers for Disease Control and Prevention state-specific breastfeeding data:
<https://www.cdc.gov/breastfeeding/data/reportcard.htm>

Agency Contact:

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