

HF7 - 0 - Earned Safe and Sick Time

Chief Author: **Liz Olson**
 Committee: **Labor, Industry, Veterans and Military Affairs**
Finance and Policy
 Date Completed: **2/4/2021 7:56:40 PM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Administrative Hearings 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
Administrative Hearings	-	-	-	-	-	-
Administrative Hearings	-	-	-	-	-	-
Labor and Industry Dept						
General Fund	-	1,202	1,734	1,424	1,424	
Minn Management and Budget						
General Fund	-	51	98	98	98	98
All Other Funds	-	102	208	208	208	208
State Total						
Administrative Hearings	-	-	-	-	-	-
General Fund	-	1,253	1,832	1,522	1,522	1,522
All Other Funds	-	102	208	208	208	208
Total	-	1,355	2,040	1,730	1,730	1,730
Biennial Total			3,395			3,460

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	10.8	13.6	13.6	13.6
Minn Management and Budget					
General Fund	-	-	-	-	-
All Other Funds	-	-	-	-	-
Total	-	10.8	13.6	13.6	13.6

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:** 2/4/2021 7:56:40 PM
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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	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	1,202	1,734	1,424	1,424
Minn Management and Budget					
General Fund	-	51	98	98	98
All Other Funds	-	102	208	208	208
Total	-	1,355	2,040	1,730	1,730
Biennial Total			3,395		3,460
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	12	41	12	12
Labor and Industry Dept					
General Fund	-	1,306	1,941	1,631	1,631
Minn Management and Budget					
General Fund	-	51	98	98	98
All Other Funds	-	102	208	208	208
Total	-	1,471	2,288	1,949	1,949
Biennial Total			3,759		3,898
2 - Revenues, Transfers In*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	12	41	12	12
Labor and Industry Dept					
General Fund	-	104	207	207	207
Minn Management and Budget					
General Fund	-	-	-	-	-
All Other Funds	-	-	-	-	-
Total	-	116	248	219	219
Biennial Total			364		438

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 Date Completed: **2/4/2021 7:56:40 PM**
 Agency: **Labor and Industry Dept**

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
General Fund	-	1,202	1,734	1,424	1,424	
Total	-	1,202	1,734	1,424	1,424	1,424
Biennial Total			2,936			2,848

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	10.8	13.6	13.6	13.6
Total	-	10.8	13.6	13.6	13.6

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:** 2/4/2021 4:18:17 PM
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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	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	1,202	1,734	1,424	1,424	
Total	-	1,202	1,734	1,424	1,424	1,424
	Biennial Total		2,936			2,848
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	1,306	1,941	1,631	1,631	
Total	-	1,306	1,941	1,631	1,631	1,631
	Biennial Total		3,247			3,262
2 - Revenues, Transfers In*						
General Fund	-	104	207	207	207	
Total	-	104	207	207	207	207
	Biennial Total		311			414

Bill Description

This bill requires all employers in Minnesota to accrue Earned Sick and Safe Leave (ESSL) for qualifying employees and allows employees to use the accrued benefit for themselves, certain eligible family members, and one designee. ESSL is to be used specifically to cover absences due to certain medical events; domestic abuse, sexual assault, or stalking; certain weather or public emergencies; or certain exposure to communicable disease. This bill gives both rulemaking and enforcement authority to the Department of Labor & Industry (DLI). The bill would be effective 180 days following final enactment.

Article 1, section 1, of this bill adds to Minn. Stat. § 181.942 for providing an employee the right to return to their former position after taking leave provided for in this bill.

Article 1, section 2, of this bill creates Minn. Stat. §§ 181.9445, which contains the new ESSL requirements. Important definitions include:

- Defines “employer” as a person with one or more employees and that an employee supplied by a staffing agency, absent a contractual agreement stating otherwise, is an employee of the staffing agency;
- Defines “employee” as a person who works at least 80 hours in a year for the employer, including a temporary employee but excluding independent contractors, and air carrier employees covered by federal law and provided equivalent paid leave;
- Defines “family member” as including:
 - o an employee’s children; spouse or registered domestic partner; siblings; parents; grandchildren; or grandparents; including these relatives of an employee’s spouse or registered domestic partner;
 - o any individual related to the employee by blood or affinity whose close association is equivalent to a family relationship; and
 - o up to one individual annually, designated by the employee.

Article 1, section 3, of this bill creates Minn. Stat. §§ 181.9446, which includes provisions on the **accrual** of ESSL:

- Covered employees accrue a minimum of one hour of ESSL for every 30 hours worked.
- ESSL begins to accrue at the beginning of employment.

- New employees may use ESSL after their 90th calendar day of employment
- The benefit accrued is capped at 48 hours per year, unless the employer agrees to a higher amount.
- Employers must roll over up to 80 hours of accrued ESSL, unless the employer agrees to a higher amount.

Article 1, section 4 of this bill creates Minn. Stat. §§ 181.9447, which includes provisions on the **use** of ESSL as well as notice and posting requirements.

- Employees may use ESSL due to:
 - o certain health conditions of the employee or the employee’s family member(s),
 - o certain absences due to domestic abuse, sexual assault, or stalking of the employee or employee’s family member;
 - o certain weather or public emergencies; or
 - o certain exposure to communicable disease.
- Employers may require reasonable notice of the need for use of ESSL and employers may, in certain circumstances, require documentation that leave taken under ESSL is qualifying leave. Employers are required to keep information regarding the use of ESSL confidential and may only disclose this information to certain specified entities. At the request of the employee, it must destroy or return records required that are older than 3 years.
- Employers can require reasonable documentation of coverage for ESSL if an employee uses leave for more than 3 consecutive days
- Employers cannot require employees to find replacement workers as a condition of an employee being able to use ESSL.
- ESSL can be used in the smallest increment of time tracked by an employer’s payroll system, presuming it is not more than four hours.
- Employers are prohibited from retaliating against an employee who requests or takes ESSL.
- Employees are entitled to return to the same or comparable position, at the same rate of pay with the same benefits after taking ESSL.
- Employees may return part-time upon agreement with the employer without giving up the right to return to employment at the end of taking ESSL.
- Employers must notify employees of their rights and remedies under this section by including a section in any employee handbook and by posting a poster in the workplace. An example of the latter is to be drafted by DLI.
- Employers must provide employees with the following information upon request:
 - o Employee’s amount of:
 - § Earned sick and safe time available to the employee
 - § Used earned sick and safe time
- Employers are required to keep accurate records of earned sick and safe time accruals and uses
- Employer confidentiality and nondisclosure requirements regarding health information of employees.

Article 1, section 5 of this bill creates Minn. Stat. §§ 181.9448, which includes provisions regarding the effect on other laws or policy.

- Employers are not prohibited from granting more generous leave benefits.
- Employers are not required to pay employees for unused paid sick and safe leave after the employee leaves employment.
- A successor employer is required to allow employees who stay employed by the business to keep their accrued sick and safe leave.

Article 1, section 6 repeals current Minn. Stat. § 181.9413. That section allows employees to use any accrued sick time due to the illness or injury of certain family members and for safety leave due to domestic abuse, sexual assault, or stalking of the employee or an employee's family member.

Article 1, section 7 sets an effective date of 180 days following final enactment.

Article 2 Sections 1-3 amends 177.27 to increase failure to submit or deliver records penalty and repeated or willfully civil penalty from \$1,000 to \$10,000 and adds the newly created statute in list of statutes in which DLI has authority to issue compliance orders.

Article 2 Sec. 4 creates new Minn. Stat. § 177.50, which provides the commissioner of DLI with limited enforcement authority over Minn. Stat. § 181.9445. Specifically, this section:

- provides that the commissioner may adopt rules to carry out Minn. Stat. §§ 177.50 and 181.9445;
- creates a private right of action with a 3-year statute of limitation for persons injured by a violation of Minn. Stat. § 177.50 that includes individual remedies through civil action to recover general and special damages along with costs and attorney fees;
- gives DLI's commissioner the ability to make grants to community organizations for the purposes of outreach and education;
- requires DLI's commissioner to submit an annual report to the legislature, reporting violations of Minn. Stat. § Minn. Stat. § 181.9445 and an analysis of noncompliance including patterns by employer, industry, or county; and
- states that an employer is responsible for not entering into contracts with entities when it has knowledge that the entity has violated the section within the past two years.

Assumptions

Earned Sick and Safe Leave is a new requirement for Minnesota employers. In the state of Minnesota there are approximately 180,000 establishments and 2.9 million employees.

Education and Outreach

The bill instructs DLI to create a poster and model notice for employers to use and display to satisfy the requirement of employee notification and remedies. Employers will translate into appropriate languages.

DLI will award grants to community organizations to aid in outreach and education efforts. DLI assumes the agency will create education and training materials. DLI will train the community organizations and monitor their outreach efforts.

Education and training materials include:

- Develop training and presentations for employees
- Develop training and presentations for employers
- Develop training and presentations for community organizations
- Translation of materials into multiple languages

- Update the agency website to help both employers and employees understand the new requirements
- Monitor community organizations and grant contracts
- Update above materials as legal determinations are made and/or statutes change

DLI will work with HR software companies to communicate new requirements as they adjust their programs to better serve Minnesota employers.

DLI will need 2.0 FTE (Labor Investigator Senior) in FY22 to develop and implement the training and outreach materials before the 180 day start date of ESSL. The amounts for grants are not reflected in the expenditures chart of this note, DLI assumes the legislature would determine the amounts made available for grants.

Rulemaking

The City of Minneapolis needed a significant amount of rulemaking when they implemented Earned Sick and Safe Leave. DLI assumes needing to start rulemaking in FY2023. DLI assumes one large rulemaking at \$310,248 in FY2023.

Enforcement

To estimate the number of inquiries and complaints to DLI related to ESSL, we have used statistical outcomes from the City of Minneapolis’ initial enforcement of sick and safe leave ordinance as part of the basis of our assumptions. The state of Minnesota has approximately 2,883,000 workers in Minnesota. The City of Minneapolis had an estimated 326,000 workers when it implemented ESSL. The City of Minneapolis received approximately 1,000 inquiries and performed 204 investigations in the first year. The number of inquiries represented 0.33% and investigations represented 0.07% of the total estimated workers in Minneapolis’ jurisdiction. The City of Minneapolis and the City of St. Paul both have ordinances containing similar sick and safe leave worker protections that would run concurrent with the state ESSL. Therefore, DLI assumes that not all workers in these local jurisdictions would contact DLI for violations, but rather their local regulator. Considering this assumption, we account for this by adjusting the number of total workers statewide by reducing the number of workers in Minneapolis and St. Paul to account for those that may opt to contact their local jurisdiction versus DLI.

Estimated number of workers/jobs in Minneapolis:	326,000
Estimated number of workers/jobs in St. Paul:	184,000
<u>Estimated remainder number of workers/jobs in Minnesota:</u>	<u>2,373,000</u>
Estimated total number of workers/jobs in Minnesota:	2,883,000
Number of workers/jobs in Minneapolis reduced by two-thirds:	108,667
Number of workers/jobs in St. Paul reduced by two-thirds:	61,333
<u>Estimated remainder number of workers/jobs in Minnesota:</u>	<u>2,373,000</u>
Estimated total number of workers/jobs in Minnesota:	2,543,000
Determining Number of Inquiries to DLI:	2,543,000 x 0.33% (rate of inquiries) = approximately 8,392 annually
Determining Number of Complaints to DLI:	2,543,000 x 0.07% (rate of complaints) = approximately 1,780 annually

Based upon the Department’s experience, as well as the experience of the City of Minneapolis, DLI has formed the following estimates of time it will take to complete various investigations under this bill. We took estimates provided by Minneapolis into consideration, but also considered difference between our work and the City’s work, as well as differences between this bill and their ordinance. For example, the City of Minneapolis ordinance does not require paid leave to employers with five or fewer employees. This bill does. In addition, we have a statewide enforcement plan that spans a greater variety of industries, which in turn, has an impact on our internal processes for investigations. Finally, we have jurisdiction over other Labor Standards which we must enforce when those issues arise during one of these investigations, which would impact how much time an investigation takes to complete.

DLI estimates that 50% of the 1,780 investigations would require 10 hours of investigator time to resolve. For these complaints, the department anticipates providing information and educating employers and workers about their responsibilities and rights to resolve the issue or claim.

The Department believes that 40% of the 1,780 investigations would require an average of 15 hours of investigator time to resolve. For these complaints the department anticipates it would require intake; complainant interviews; worker and witness interviews of those identified by the complainant; collection and review of documents provided by the complainant or workers and other witnesses identified by the complainant; preparation for onsite workplace investigation; interviews of employers and management employees and other workers at the workplace; review of payroll records and other relative documents; determination of violations; calculation of back wages owed; preparation of appropriate documentation and communications; and engagement in efforts to informally resolve the violations found.

The Department believes that 9.94% of the 1,780 investigations would require 25 investigator hours per investigation. These complaints may involve larger numbers of workers; multiple workplaces; failure of the employer to maintain required records; reconstruction of records; and actions by the employer to obstruct the investigation.

The Department estimates that 0.06% of the 1,780 investigations would require 120 hours of investigator time due to the need for litigation to resolve.

Formula Assumptions:

50% Cases at 10 hours of investigative time.	(890 x 10 = 8,900 hours)
40% Cases at 15 hours of investigative time	(712 x 15 = 10,680 hours)
9.94% Cases at 25 hours of investigative time	(178 x 25 = 4,423 hours)
0.06% Cases at 120 hours of investigative time	(1 x 120 = 120 hours)

Total investigative hours = 24,123 divided by 2,080 = 11.6 FTE annually

DLI will structure the 11.6 FTE with 1 FTE working supervisor (State Program Admin Director), 1 FTE team lead (State Program Admin Coordinator) and 9.6 FTE investigative staff (Labor Investigator Senior). DLI anticipates the 9.6 FTE labor investigator senior positions to be hired by 1/1/2022.

The Department will also need 2 FTE administrative staff annually to provide investigative support, perform data collection analysis, education and awareness raising, processing of penalties, legal paperwork, and grants management. The administrative staff will assist with responding to the inquires that will not need investigations.

Case Management System

DLI will need to expand their labor standards case management system to track ESSL complaints, investigations, penalties, and court actions. It is assumed the current IT system can be used for this purpose, however DLI would need to modify the existing platform to provide functionality to ESSL. The estimated one-time cost to implement ESSL into the IT system is \$13,000.

User license costs related to the case management system are billed at \$600 per user, per year. DLI can expect to add 14 additional user licenses related to ESSL for a total cost of \$8,400 annually.

Legislative Report

DLI's case management system will track violations associated with Minn. Stat. 181.9445 181.9448. It will take one employee less than 100 hours to pull the data, analyze trends, and prepare the legislative report. DLI can absorb the costs associated with this annual legislative report. That equals <0.05 FTE.

Penalties

The bill also increases the penalty for failure to submit or deliver records from \$1,000 to \$10,000. This penalty change impacts all DLI's Labor Standards enforcement authority, not just ESSL. Each year the Department assesses approximately \$17,500 in record penalties and collects approximately \$15,000 from employers on closed cases (average

from CY 2017 CY 2020). Based upon the size of the proposed increase, penalty collections will increase. However, it is assumed that increasing the size of a penalty will result in a deterrence by some employers from violating these law and thus, decrease in number of penalties assessed because of greater employer compliance with employment record demands, proper maintenance of records, and greater employer cooperation with investigations. DLI estimates records penalty revenues will increase to \$100,000, a net change in \$85,000 annually.

On average, the Department assessed and collected a penalty in 1.9% of all investigations. For new penalties specific to ESSL, DLI estimates the average collected penalty amount will be \$3,600. This would result in new revenues in the amount of \$122,400 (1,780 investigations X 1.9% = 34 penalties collected X \$3,600 = \$122,400)

Office of Administrative Hearings

On average, DLI estimates it would refer 1 claim annually to the Office of Administrative Hearings (OAH). Averaging the number of administrative law judge (ALJ) hours in similar matters referred from DLI that ultimately go to hearing, it is assumed that each hearing will require an estimated 55 hours of ALJ time at the currently approved billable rate of \$215 per hour. Total estimated costs for OAH is \$11,825.

Expenditure and/or Revenue Formula

Labor Investigator Sr - MAPE 12L	2022	2023	2024	2025
FTE	6.8	9.6	9.6	9.6
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	744,340	1,050,832	1,050,832	1,050,832
Non-Personnel Services	75,168	106,119	106,119	106,119
Cumulative Cost	819,507	1,156,952	1,156,952	1,156,952

Office & Admin Spec Sr - AFSCME 64L	2022	2023	2024	2025
FTE	2	2	2	2
Salary per FTE (midpoint)	46,437	46,437	46,437	46,437
Fringe Benefits (35% of Salary)	16,253	16,253	16,253	16,253
Indirect (22.5% of Salary/Fringe)	14,105	14,105	14,105	14,105
Salary / Fringe / Indirect	153,590	153,590	153,590	153,590
Non-Personnel Services	14,168	14,168	14,168	14,168
Cumulative Cost	167,759	167,759	167,759	167,759

State Prog Admin Dir - MMA 21k	2022	2023	2024	2025

FTE	1	1	1	1
Salary per FTE (midpoint)	81,536	81,536	81,536	81,536
Fringe Benefits (35% of Salary)	28,538	28,538	28,538	28,538
Indirect (22.5% of Salary/Fringe)	24,767	24,767	24,767	24,767
Salary / Fringe / Indirect	134,840	134,840	134,840	134,840
Non-Personnel Services	7,804	7,804	7,804	7,804
Cumulative Cost	142,644	142,644	142,644	142,644

State Prog Admin Coord - MAPE 18L	2022	2023	2024	2025
FTE	1	1	1	1
Salary per FTE (midpoint)	81,954	81,954	81,954	81,954
Fringe Benefits (35% of Salary)	28,684	28,684	28,684	28,684
Indirect (22.5% of Salary/Fringe)	24,894	24,894	24,894	24,894
Salary / Fringe / Indirect	135,531	135,531	135,531	135,531
Non-Personnel Services	7,804	7,804	7,804	7,804
Cumulative Cost	143,336	143,336	143,336	143,336

Cumulative Expenditures	2022	2023	2024	2025
Labor Investigator Sr	819,507	1,156,952	1,156,952	1,156,952
State Prog Admin Director	142,644	142,644	142,644	142,644
State Prog Admin Coordinator	143,336	143,336	143,336	143,336
Office & Admin Spec Sr	167,759	167,759	167,759	167,759
OAH Legal Fees	11,825	11,825	11,825	11,825
IT Case Mgmt Build	13,000	-	-	-
IT Case Mgmt User Licenses	8,400	8,400	8,400	8,400
Rulemaking	-	310,248	-	-
Cumulative Expenditures	1,306,471	1,941,163	1,630,915	1,630,915

Revenues	2022	2023	2024	2025
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Records Penalties - Existing Programs	42,500	85,000	85,000	85,000
Records Penalties - ESSL	61,200	122,400	122,400	122,400
Total Revenues	103,700	207,400	207,400	207,400

Long-Term Fiscal Considerations

The initial outreach and education costs will be in the first fiscal year, however continued outreach is needed as legal cases are settled, statute changes, or rule making is performed.

It is assumed that complaints and investigations will increase the first few years as both employers and employees are learning about the new requirements. Over time the complaints and investigations will even out.

Local Fiscal Impact

Local governments may see costs if the language in this bill expands their current definition of allowable leave and/or requires modifications to their HR system to track the change in leave requirements.

References/Sources

Minnesota Rulemaking Manual

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HF7 - 0 - Earned Safe and Sick Time

Chief Author: **Liz Olson**
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**
 Date Completed: **2/4/2021 7:56:40 PM**
 Agency: **Administrative Hearings**

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
Administrative Hearings	-	-	-	-	-	-
Total	-	-	-	-	-	-
Biennial Total			-			-

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
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.

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State Cost (Savings) Calculation Details

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

State Cost (Savings) = 1-2		Biennium			Biennium	
Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings	-	12	41	12	12	12
Total		-	12	41	12	12
Biennial Total				53		24
2 - Revenues, Transfers In*						
Administrative Hearings	-	12	41	12	12	12
Total		-	12	41	12	12
Biennial Total				53		24

Bill Description

HF7 provides for an employee to earn sick and safe time to be used for reasons of medical conditions, for care of a family member, domestic abuse, sexual abuse, stalking, weather-related events, or exposure to a communicable disease. The legislation also authorizes the Department of Labor and Industry (DLI) to conduct rulemaking to implement the provisions of 181.9445 to 181.9448, Earned Sick and Safe Time, and Sec. 4, Enforcement.

Assumptions

The Office of Administrative Hearings (OAH) has used DLI’s estimate to project that one matter will be appealed to OAH. OAH assumes that each hearing will require an estimated 55 hours of administrative law judge (ALJ) time at the currently approved billable rate of \$215 per hour (see Minn. Stat. § 16A.126, subd. 1 (2020)).

DLI assumes a program of this size will require one large rulemaking at \$310,248 in FY2022. Based on past practices, OAH assumes that a large rulemaking under chapter 14 will require an estimated 135 hours of ALJ time for activity related to rulemaking procedures. Of the estimated rulemaking amount of \$310,248, \$29,025 is for the estimated 135 hours of ALJ time for a large rulemaking.

OAH currently bills ALJ time for rulemaking at the MMB-approved billable rate of \$215 per hour (see Minn. Stat. § 16A.126, subd. 1 (2020)).

Expenditure and/or Revenue Formula

Estimated 55 hours of ALJ time at \$215/hr = \$11,825
 Estimated one appeal referred to OAH per fiscal year = \$11,825/year
 Estimated 135 hours of ALJ time for rulemaking activities in FY23 related to implementing the requirements of Sec. 3, Rehire and Retention of Laid Off Workers = 135 hours x \$215/hr = \$29,025 charged to DLI in FY2022 pursuant to the requirements of Minn. Stat. § 14.53.
 FY23 Total Expenditures - \$11,825 + \$29,025 = \$40,850
 FY22 and subsequent years - \$11,825

Long-Term Fiscal Considerations

The costs associated with the rulemaking activities are a one-time occurrence. Hearing costs would continue into future years.

Local Fiscal Impact

References/Sources

Agency Contact: Denise Collins

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HF7 - 0 - Earned Safe and Sick Time

Chief Author: **Liz Olson**
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**
 Date Completed: **2/4/2021 7:56:40 PM**
 Agency: **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
General Fund	-	51	98	98	98	98
All Other Funds	-	102	208	208	208	208
Total	-	153	306	306	306	306
Biennial Total			459			612

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	-	-	-	-
All Other Funds	-	-	-	-	-
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:** 1/29/2021 8:33:57 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	
Dollars in Thousands	FY2021	FY2022	FY2023	FY2024	FY2025	
General Fund	-	51	98	98	98	
All Other Funds	-	102	208	208	208	
Total	-	153	306	306	306	306
Biennial Total			459			612
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	51	98	98	98	
All Other Funds	-	102	208	208	208	
Total	-	153	306	306	306	306
Biennial Total			459			612
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
All Other Funds	-	-	-	-	-	
Total	-	-	-	-	-	-
Biennial Total			-			-

Bill Description

This bill relates to the provision of employee earned paid leave that can be used for reasons including the employee's health conditions, care of a family member, absence due to domestic abuse or stalking, weather-related events, and exposure to a communicable disease. Earned paid leave is available to employees who are employed by the employer for at least 80 hours in the year, and accrues at one hour for every 30 hours worked, up to 48 hours of accrued leave per year. Employers are not required to provide additional paid leave under the bill to the extent the leave provided under their paid time off policy or collective bargaining agreement meets or exceeds the amount of paid leave under the bill.

Assumptions

Estimates and projected growth estimates of headcount and wages, as well as the split of payroll costs between the general fund and all other state funds, are based on an analysis of data from the SEMA4 system, the state's human resources and payroll system.

This fiscal note represents costing for state agencies that used the SEMA4 system in FY 2020. These include the state Executive Branch (including Minnesota State), Judicial Branch, and portions of the Legislative Branch (Legislative Coordinating Commission, Legislative Auditor, and Senate).

Total state employment (headcount) will grow at 0.45% annually reflecting the average annual growth from FY 2011-FY 2020. No growth is assumed after FY 2022.

Per employee wages will grow by 2.42% annually, reflecting the average annual growth from FY 2011-FY 2020. No growth is assumed after FY 2023.

In FY 2020, 32.0% of employee compensation costs were paid from the general fund, and 68.0% of employee compensation costs were paid from all other funds.

For most state agency employees, the amount of and accrual rate of paid sick leave provided under collective bargaining agreements or compensation plans meets or exceeds the amount of paid leave provided under the bill, so they would not be entitled to additional leave accruals under the bill. Certain state agency appointments (e.g., intermittent; emergency; temporary; part-time below a certain threshold number of hours) are not currently eligible for paid sick leave under collective bargaining agreements or compensation plans but would be eligible for paid leave accruals under the bill. The

bill provides for some eligible uses that are not currently eligible uses under the sick leave provisions of collective bargaining agreements or compensation plans (e.g., weather and public emergencies and school closures; care for stepsiblings, foster siblings, or any individual related by blood or affinity; care for family members exposed to but who have not contracted a communicable disease).

The bill requires reinstatement of previously accrued but unused leave time if the employee is rehired. It is assumed that accruals that were paid out to employees upon separation pursuant to collective bargaining agreement or compensation plan would be considered to be used under the bill and therefore would not be reinstated.

For most state agencies, this fiscal note assumes no additional staffing costs for the employees who take sick leave as provided in this bill. Some agencies may hire additional staff in certain circumstances, while others may redistribute duties across existing employees. Thus, the expanded leave provided in this bill may or may not result in additional costs to state agencies. These potential costs are not reflected in this fiscal note. However, it is assumed that staffing changes will be necessary at 24 hour/7 day operations in certain agencies, as noted below. The Departments of Human Services, Corrections, and Veterans Affairs account for approximately 91 percent of these employees.

Use of accrued leave due to an employee's health conditions, care of most family members, and absences due to domestic abuse or stalking will not increase above current levels since these already are allowed uses of sick leave under collective bargaining agreements, compensation plans, and/or Minnesota Statutes Section 181.9413.

As noted above, the bill extends the benefit to certain part-time employees and intermittent, emergency, and temporary employees who are not normally eligible for sick leave benefits under collective bargaining agreements and compensation plans. It is assumed that these employees taking leave will be covered by existing staff except at 24/7 operating facilities as noted below. It is also assumed that the direct cost of any employee that is: 1. Not currently eligible for paid leave under the state's collective bargaining agreements and compensation plans; 2. Newly eligible for paid leave under this bill; and 3. Choosing to replace unpaid leave with paid leave; is negligible across the state government enterprise and is not quantified in this fiscal note. This is a small subset of state agency employees who are generally employed for short-term and/or part-time appointments, and it is assumed that the accrual of leave provided under this bill will occur at a slow pace for these employees. Moreover, MMB assumes that these employees' full projected compensation costs (not accounting for potential unpaid leaves) are budgeted for by many state agencies

Expenditure and/or Revenue Formula

1.) **MMB costs due to Notice Requirements:** The bill contains notice requirements to employees. Employers must post or provide notice informing employees of the benefits and requirements provided in the bill. Notice must be provided to each employee by the bill's effective date (180 days following final enactment) or the date of employment, whichever is later. Notice must be provided in alternative languages. Note that the costs below do not include the potential costs of producing online materials that would be accessible to individuals who are blind or visually impaired whose primary language is not English. While MMB believes this accessibility work would result in a cost, MMB has been unable to find vendors who provide this service to estimate the fiscal impact.

Translation costs: The bill requires employers to supply employees with a notice in English and other appropriate languages. While the Department of Labor and Industry's (DLI) fiscal note assumes that translation costs are the responsibility of the employer, DLI does assume in its fiscal note that DLI will provide some translations as part of DLI's model notice responsibilities under Section 4, Subdivision 10, Paragraph C, Clause 2. Accordingly, MMB's fiscal note does not assume any additional translation costs for state agencies.

Printing costs: While employers can satisfy notice requirements by electronic means (which MMB does not assume would carry a significant cost beyond the unknown cost of accessible documents in alternative languages, noted above), MMB assumes the need to produce paper postings to provide in State of Minnesota government agency workplaces, particularly for employees who do not have regular access to a computer. Based on MMB's recent experience providing Fraud Awareness Week notices to executive branch state agencies, MMB estimates the need to distribute 300 posters per language translated by DLI (assumed to total five) across executive branch agencies at a cost of \$600 per language. The fiscal note assumes costs will be incurred by MMB on behalf of executive branch state agencies.

MMB printing costs: \$600 x 5 languages (FY 2022): \$3,000 (general fund)

Year	Cost
FY2022	\$3,000

FY2023	\$0
FY2024	\$0
FY2025	\$0

2.) Executive branch state agency costs due to staffing changes: The bill expands sick leave benefits for eligible uses and for employees not covered under the sick leave provisions of current collective bargaining agreements and compensation plans. There are no reliable data upon which to base an estimate of the number of employees who will use this expanded benefit. Starting in FY 2014, there was an expansion in the availability of use of sick leave benefits for the care of extended family members pursuant to Minnesota Statutes Section 181.9413. This coincided with an increase of 2.3% in employees using sick leave, although it is unknown if the new law was directly linked to the increase. Paid Parental Leave represents a new benefit offered by the state starting in FY 2017. In FY 2018 and FY 2019, 2.2% and 2.1% of all state agency employees had used Paid Parental Leave in each year.

Based on the experiences noted above, MMB assumes that 2.2% of all state agency employees will also use the expanded sick leave benefits under the bill (both new eligible uses and newly eligible employees). As noted in the Assumptions section, MMB assumes increased staffing costs attributable to backfilling employees in 24 hour/7 day operations will be necessary in certain agencies to maintain minimum staffing levels.

The following assumptions are used to calculate the staffing costs for 24/7 operations in state agencies:

*There were 6,193 multi-shift employees in 24/7 operations as of January 2021. The Departments of Human Services, Corrections, and Veterans Affairs account for approximately 91 percent of these employees.

* Assuming growth of state employment of 0.45% annually, these 6,193 employees in 24/7 operations will grow to a base of 6,221 employees by FY 2022.

* As of January 2021, the average wage for these employees is \$35.46/hour including fringe benefits. The average overtime wage is estimated at \$53.20/hour. This fiscal note assumes 2.42% annual wage growth to a base of \$36.32/hour regular and \$54.49/hour overtime in FY 2022 and \$37.20/hour regular and \$55.81/hour overtime in FY 2023.

* Approximately 2.2% of the projected 6,221 multi-shift employees will annually use the expanded sick leave benefits provided in the bill (approximately 137 employees).

* These employees are assumed to accrue and use 48 hours of the expanded sick leave benefits provided in the bill in a year.

* It is assumed that 50% of leave hours taken by these employees will be replaced at overtime wage rates and 50% would be replaced at regular wage rates.

* The fiscal note assumes the bill is enacted by June 1, 2021, making the effective date 180 days later, or approximately December 1, 2021, and that use (in hours) of the expanded sick leave benefits provided in the bill is limited by 50% in the first year of implementation (FY 2022) to provide time for accrual.

A	B	C	D	E	F	G	H
Fiscal Year	Total leave-eligible employees taking benefit	Total leave taken per employee	Total leave taken (B*C)	Hourly wage replacement rate	Hours per hourly wage replacement rate (D*50%)	Cost by replacement wage type (E*F)	Total jcost by fiscal year (sum of G in each fiscal year)
FY 2022	137	24	3,288	\$36.32 REG \$54.49 OT	1,644	\$59,710 \$89,582	\$149,292
FY 2023	137	48	6,576	\$37.20 REG \$55.81 OT	3,288	\$122,314 \$183,503	\$305,817
FY 2024	137	48	6,576	\$37.20 REG \$55.81 OT	3,288	\$122,314 \$183,503	\$305,817
FY 2025	137	48	6,576	\$37.20 REG	3,288	\$122,314	\$305,817

				\$55.81 OT		\$183,503	
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It is assumed that 32.0% of the costs calculated above will be paid from the general fund and 68.0% from all other state funds based on the overall allocation for all state agency employee compensation costs in FY 2020. The cost by fund may vary significantly by impacted state agency.

Fiscal Year	Total Cost	Percentage allocation by state fund	Annual cost, by fund
FY2022	\$149,292	32.0% general fund 68.0% all other funds	\$47,773 \$101,519
FY2023	\$305,817	32.0% general fund 68% all other funds	\$97,861 \$207,955
FY2024	\$305,817	32.0% general fund 68% all other funds	\$97,861 \$207,955
FY2025	\$305,817	32.0% general fund 68% all other funds	\$97,861 \$207,955

Total costs

In thousands

MMB	FY2022	FY2023	FY2024	FY2025
General fund	\$3	\$0	\$0	\$0
State Agencies	FY2022	FY2023	FY2024	FY2025
General fund	\$48	\$98	\$98	\$98
All other funds	\$102	\$208	\$208	\$208
General fund grand total	\$51	\$98	\$98	\$98
All other funds grand total	\$102	\$208	\$208	\$208

Long-Term Fiscal Considerations

Local Fiscal Impact

Local units of government may also incur costs related to the provision of the earned sick and safe time benefits provided in this bill, particularly related to backfilling staff in 24/7 operations. Local governments may also incur similar notification costs identified in this fiscal note.

References/Sources

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