

HF39 - 0 - Rehire and Retention of Laid Off Workers

Chief Author: **Andrew Carlson**
 Committee: **Labor, Industry, Veterans and Military Affairs**
Finance and Policy
 Date Completed: **1/26/2021 9:52:01 AM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 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	-	-	-	-	-	-
Administrative Hearings	-	-	-	-	-	-
Labor and Industry Dept						
General Fund	-	314	103	17	17	
State Total						
Administrative Hearings	-	-	-	-	-	-
General Fund	-	314	103	17	17	
Total	-	314	103	17	17	17
Biennial Total			417			34

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	.57	.45	.14	.14
Total	-	.57	.45	.14	.14

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:** 1/26/2021 9:52:01 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
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	-	-	-	-
Labor and Industry Dept					
General Fund	-	314	103	17	17
Total	-	314	103	17	17
Biennial Total			417		34
1 - Expenditures, Absorbed Costs*, Transfers Out*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	11	-	-	-
Labor and Industry Dept					
General Fund	-	314	103	17	17
Total	-	325	103	17	17
Biennial Total			428		34
2 - Revenues, Transfers In*					
Administrative Hearings	-	-	-	-	-
Administrative Hearings	-	11	-	-	-
Labor and Industry Dept					
General Fund	-	-	-	-	-
Total	-	11	-	-	-
Biennial Total			11		-

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 Date Completed: **1/26/2021 9:52:01 AM**
 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	-	314	103	17	17	
Total	-	314	103	17	17	
Biennial Total			417			34

Full Time Equivalent Positions (FTE)	Biennium			Biennium	
	FY2021	FY2022	FY2023	FY2024	FY2025
General Fund	-	.57	.45	.14	.14
Total	-	.57	.45	.14	.14

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:** 1/26/2021 9:51:52 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	-	314	103	17	17	
Total	-	314	103	17	17	
	Biennial Total		417		34	
1 - Expenditures, Absorbed Costs*, Transfers Out*						
General Fund	-	314	103	17	17	
Total	-	314	103	17	17	
	Biennial Total		417		34	
2 - Revenues, Transfers In*						
General Fund	-	-	-	-	-	
Total	-	-	-	-	-	
	Biennial Total		-		-	

Bill Description

This bill codifies new workers' rights under 181.990 to 181.993 as the Emergency Rehire and Retention law. If enacted, it will provide re-employment rights and protections to certain workers who experienced a non-disciplinary employment layoff in the hotel, event-center, and airport hospitality sector, or who work in janitorial, building maintenance or security services for office, retail and other commercial buildings, following January 31, 2020 due to reasons related to and resulting from a declared public health emergency.

The bill requires employers related to the mentioned sectors to communicate electronically or in writing the availability of job positions to which laid-off personnel qualify for and are entitled to consideration for re-employment. If offered a position, the laid-off individual is afforded at least 5 business days to accept or decline the offer. The bill allows for employers to offer positions based upon an order of preference factors including a position being same or similar to the position most recently lost by the employee, or one in which they could qualify for if the same training is provided to a new employee hired into that position. Employers that reject a worker based upon lack of qualifications for a position must provide notice to the laid-off individual within 30 days that outlines whom was selected for the position and the reasons for disqualification.

Preferential re-employment rights in this bill also extend to successor employers in the sector. The bill requires incumbent employers to deliver to their successors within 15 days of the transfer of documents including name, address, date of hire, and employment occupation classification of each eligible employee. The successor is then required to retain the preferential list of these eligible workers and hire from it for a period of not less than 6 months from the transfer of documents date and preserve for a period of 3 years, records reflecting offers of employment to eligible employees. Employers who hire from this list must retain the individual for a period of not less than 90 days.

Successor employers must also retain eligible employees for a transitional period of 90 days and may not discharge without cause. Following 90 days, the employer must conduct written performance reviews of the re-employed and must retain these records for not less than 3 years.

The bill also provides worker protection from employer or successor employer retaliation for workers asserting their rights and requires the Department of Labor and Industry (DLI) to investigate employee or eligible employee complaints of employer violations outlined in the new law. If a violation is found, the law empowers the Department to award hiring and reinstatement rights, front pay and back pay during which the violation continues based upon their highest regular rate including the time lost due to the violation and the value of benefits they were entitled to receive.

The bill becomes effective the day following enactment and requires the Department of Labor and Industry to prepare and submit a report on or before December 31, 2022 regarding the effectiveness on this law promoting employment stability and provide guidance to the legislature on further actions recommended.

Assumptions

This is a new state law so the Department anticipates that it will receive increased inquiries and complaints from employers and workers as a result of new state law requirements and protections. DLI assumes that the higher frequency of calls and complaints will occur from the date of enactment through the first two years.

To quantify the number of inquiries anticipated, the Department must source from other data. First, the Department over the last two years has averaged 186 inquiries annually related specifically to the state minimum wage. There were more inquiries fielded by the Department following the enactment of the state minimum wage change in 2015 but data is not available to quantify that number. In the absence of that data, the Department anticipates this new right will generate more questions. To account for this, the Department doubles the average number of inquiries with 372 annually for the first two years and less than 186 inquiries in future years. Inquiries are considered requests for information handled by phone or email. An inquiry amounts to very limited engagement and is resolved in approximately 3-6 minutes. The total amount of time calculated to manage inquiries is immaterial and absorbed by existing staff.

Enforcement:

This law expands the Department of Labor and Industry's labor standards enforcement responsibilities as it requires the Department to investigate all complaints received by employees or eligible employees alleging violations of the new 181.991. Further, it empowers the Department to make determinations of violation(s) and awards that may include employment reinstatement rights and back pay to complainants. For purposes of estimating the number of complaints the Department may receive we will use minimum wage complaint data. The Department received 104 complaints in the first year following enactment of the state minimum wage change in 2015, and 86 complaints the following year. Since that time, the Department has averaged 22.5 minimum wage related complaints per year. These first- and second-year complaint totals represented 0.05% and 0.04% respectively of the estimated 205,000 Minnesotans who were earning minimum wage in 2019. Second, the Department of Employment and Economic Development (DEED) reports that between March 2020 and January 2021 approximately 17,711 workers filed for unemployment in the targeted sectors of this bill. This is a smaller number than the estimated number of Minnesotans earning minimum wage. However, based upon the fact that this is a new law we anticipate more complaints in comparison to the rate of minimum wage complaints indicated above. Based upon a combination of the DEED number of claims data, and the DLI complaint percentage rate of complaints received, and doubling that number of complaints to account for the fact that this is a new law, DLI anticipates receiving approximately 20 complaints in the first year, 16 in the second year, and 5 annually in future years from Minnesotans impacted by this bill. The Department assumes that a greater percentage of the cases will require more investigative time due to their complexity.

Although the bill becomes effective the day following enactment, DLI assumes an effective date of 7/1/21 (FY22) for this note.

FY2022 Complaints: 20

20% Complaint Cases (4)	x 24 hours per case =	96 hours
30% Complaint Cases (6)	x 40 hours per case =	240 hours
30% Complaint Cases (6)	x 60 hours per case =	360 hours
20% Compliant Cases (4)	x 120 hours per case =	<u>480 hours</u>
Total Investigative Hours:		1,176 Hours (0.57 FTE)

FY2023 Complaints: 16

20% Complaint Cases (3.2)	x 24 hours per case =	76.8 hours
30% Complaint Cases (4.8)	x 40 hours per case =	192 hours

30% Complaint Cases (4.8)	x 60 hours per case =	288 hours
20% Compliant Cases (3.2)	x 120 hours per case =	<u>384 hours</u>
Total Investigative Hours:		940.8 Hours (0.45 FTE)
FY2024/25 Complaints: 5		
20% Complaint Cases (1)	x 24 hours per case =	24 hours
30% Complaint Cases (1.5)	x 40 hours per case =	60 hours
30% Complaint Cases (1.5)	x 60 hours per case =	90 hours
20% Compliant Cases (1)	x 120 hours per case =	<u>120 hours</u>
Total Investigative Hours:		294 Hours (0.14 FTE)

The Department will need 0.57 FTE in FY2022, 0.45 FTE in FY2023, and 0.14 FTE each year after to respond to inquiries and conduct investigations related to complaints received, assuming no additional peacetime emergency is declared. Present Department attorney staffing can absorb any additional case workload as we assume this new area would be a very small percentage of current case work referred to Department OGC unit.

Outreach and Education:

This proposal expands access to existing law that DLI enforces. \$50,000 in the first year would be used in outreach efforts to ensure employers and employees understand the change in law and know their rights. Outreach costs include printing, translations of materials, and marketing efforts.

Rulemaking:

The Department is authorized by this new law to administer rulemaking for purposes of implementing its enforcement of the law. This is a new law, so the Department anticipates a medium size rulemaking for this effort. The rulemaking would be subject to the Minnesota Administrative Procedures Act in Chapter 14, including §14.125, which requires publication of a Notice of Intent within 18 months of the effective date of the authorizing statute. Estimated cost for a medium rule is \$133,376.

Technology:

The Department is currently developing a new case management system to replace its current platform that will no longer be supported by MN.IT. Since this bill takes effect during or immediately after system implementation, MN.IT estimates a one-time \$13,000 for a vendor contract to make modifications required to support this bill.

Reporting:

This bill requires the Department to prepare and submit a report on December 31, 2022

DLI anticipates the need to partner with a consultant for the bill's report requirements. The consultant would work from January 2022 through December 2022. Based on historical averages of contractor costs, DLI estimates a total cost of \$100,000 for the one-year consultant. Labor Standards staff support requirements for the consultant include:

- facilitation
- stakeholder engagement and surveying
- general research
- data compiling
- report compiling and drafting

DLI's Research and Statistics (R&S) unit will coordinate with the consultant as well as review the study materials, analyze the adequacy of the research data, and review the final report prepared by the consultant.

- R&S expects this effort to take approximately 100 hours, this function is minimal and will be funded through the agencies indirect general support budget.

Expenditure and/or Revenue Formula

Labor Investigator Sr - MAPE 12L	2022	2023	2024	2025
FTE	0.57	0.45	0.14	0.14
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 (22.50% of Salary/Fringe)	20,105	20,105	20,105	20,105
Salary / Fringe / Indirect	62,393	49,258	15,325	15,325
Non-Personnel Services	5,161	4,074	1,268	1,268
Cumulative Cost	67,554	53,332	16,592	16,592

Cumulative Expenditures	2022	2023	2024	2025
Labor Investigator Sr	67,554	53,332	16,592	16,592
Rulemaking	133,376	-	-	-
Outreach and Education	50,000	-	-	-
IT Case Mgmt Build	13,000	-	-	-
Report Consultant	50,000	50,000	-	-
Cumulative Expenditures	313,930	103,332	16,592	16,592

Long-Term Fiscal Considerations

Local Fiscal Impact

References/Sources

<https://www.health.state.mn.us/data/rules/manual/docs/manual2020.pdf>, page 282

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Chief Author: **Andrew Carlson**
 Committee: **Labor, Industry, Veterans and Military Affairs Finance and Policy**
 Date Completed: **1/26/2021 9:52:01 AM**
 Agency: **Administrative Hearings**

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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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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Dollars in Thousands		FY2021	FY2022	FY2023	FY2024	FY2025
Administrative Hearings		-	-	-	-	-
Total		-	-	-	-	-
Biennial Total				-		-
1 - Expenditures, Absorbed Costs*, Transfers Out*						
Administrative Hearings		-	11	-	-	-
Total		-	11	-	-	-
Biennial Total				11		-
2 - Revenues, Transfers In*						
Administrative Hearings		-	11	-	-	-
Total		-	11	-	-	-
Biennial Total				11		-

Bill Description

HF39 provides rehire and retention protections for workers who were laid-off during a declared emergency. The legislation also authorizes the Department of Labor and Industry (DLI) to conduct rulemaking to implement the provisions of 181.991 to 181.993, Rehire and Retention of Laid Off Workers, Sec. 3, Enforcement and Rulemaking.

Assumptions

DLI assumes a program of this size will require one medium rulemaking at \$133,376 in FY2022. Based on past practices, OAH assumes that a medium rulemaking under chapter 14 will require an estimated 50 hours of ALJ time for activity related to rulemaking procedures. Of the estimated rulemaking amount of \$133,376, \$10,750 is for the estimated 50 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 50 hours of ALJ time for rulemaking activities related to implementing the requirements of Sec. 3, Rehire and Retention of Laid Off Workers = 50 hours x \$215/hr = \$10,750 charged to DLI in FY2022 pursuant to the requirements of Minn. Stat. § 14.53.

Long-Term Fiscal Considerations

The costs associated with the rulemaking activities are a one-time occurrence.

Local Fiscal Impact

References/Sources

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