

HF19 - 7A - Earned Sick and Safe Time

Chief Author: **Sandra Pappas**
 Committee: **Finance**
 Date Completed: **3/28/2023 2:41:35 PM**
 Lead Agency: **Labor and Industry Dept**
 Other Agencies:
 Administrative Hearings Legislature
 Minn Management and Supreme Court
 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Administrative Hearings | - | - | - | - | - | - |
| Administrative Hearings | - | - | - | - | - | - |
| Labor and Industry Dept | | | | | | |
| General Fund | - | 1,641 | 2,302 | 1,692 | 1,692 | |
| Legislature | | | | | | |
| General Fund | - | 18 | - | - | - | - |
| Minn Management and Budget | | | | | | |
| General Fund | - | 147 | 264 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 | 499 |
| Supreme Court | | | | | | |
| General Fund | - | 1 | 427 | 388 | 388 | 388 |
| State Total | | | | | | |
| Administrative Hearings | - | - | - | - | - | - |
| General Fund | - | 1,807 | 2,993 | 2,344 | 2,344 | 2,344 |
| All Other Funds | - | 244 | 499 | 499 | 499 | 499 |
| Total | - | 2,051 | 3,492 | 2,843 | 2,843 | 2,843 |
| Biennial Total | | | 5,543 | | | 5,686 |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|--------|--------|----------|--------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Administrative Hearings | - | - | - | - | - |
| Administrative Hearings | - | - | - | - | - |
| Labor and Industry Dept | | | | | |
| General Fund | - | 10.8 | 13.6 | 13.6 | 13.6 |
| Legislature | | | | | |
| General Fund | - | - | - | - | - |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|-------------|-------------|-------------|-------------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Minn Management and Budget | | | | | |
| General Fund | - | - | - | - | - |
| All Other Funds | - | - | - | - | - |
| Supreme Court | | | | | |
| General Fund | - | - | 3 | 3 | 3 |
| Total | - | 10.8 | 16.6 | 16.6 | 16.6 |

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: Karl Palm **Date:** 3/28/2023 2:41:35 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Administrative Hearings | - | - | - | - | - |
| Administrative Hearings | - | - | - | - | - |
| Labor and Industry Dept | | | | | |
| General Fund | - | 1,641 | 2,302 | 1,692 | 1,692 |
| Legislature | | | | | |
| General Fund | - | 18 | - | - | - |
| Minn Management and Budget | | | | | |
| General Fund | - | 147 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 |
| Supreme Court | | | | | |
| General Fund | - | 1 | 427 | 388 | 388 |
| Total | - | 2,051 | 3,492 | 2,843 | 2,843 |
| Biennial Total | | | 5,543 | | 5,686 |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | |
| Administrative Hearings | - | - | - | - | - |
| Administrative Hearings | - | 12 | 45 | 12 | 12 |
| Labor and Industry Dept | | | | | |
| General Fund | - | 1,745 | 2,509 | 1,899 | 1,899 |
| Legislature | | | | | |
| General Fund | | | | | |
| Expenditures | - | 19 | 1 | 1 | 1 |
| Absorbed Costs | - | (1) | (1) | (1) | (1) |
| Minn Management and Budget | | | | | |
| General Fund | - | 147 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 |
| Supreme Court | | | | | |
| General Fund | - | 1 | 494 | 461 | 461 |
| Total | - | 2,167 | 3,811 | 3,135 | 3,135 |
| Biennial Total | | | 5,978 | | 6,270 |
| 2 - Revenues, Transfers In* | | | | | |
| Administrative Hearings | - | - | - | - | - |
| Administrative Hearings | - | 12 | 45 | 12 | 12 |
| Labor and Industry Dept | | | | | |
| General Fund | - | 104 | 207 | 207 | 207 |
| Legislature | | | | | |
| General Fund | - | - | - | - | - |
| Minn Management and Budget | | | | | |
| General Fund | - | - | - | - | - |
| All Other Funds | - | - | - | - | - |
| Supreme Court | | | | | |
| General Fund | - | - | 67 | 73 | 73 |
| Total | - | 116 | 319 | 292 | 292 |

| State Cost (Savings) = 1-2 | Biennium | | | Biennium | |
|-----------------------------------|-----------------|--------|------------|-----------------|------------|
| Dollars in Thousands | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Biennial Total | | | 435 | | 584 |

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 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 1,641 | 2,302 | 1,692 | 1,692 | |
| Total | - | 1,641 | 2,302 | 1,692 | 1,692 | 1,692 |
| Biennial Total | | | 3,943 | | | 3,384 |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|-------------|-------------|-------------|-------------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| 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: Karl Palm **Date:** 3/28/2023 2:41:08 PM
Phone: 651-296-6055 **Email:** karl.palm@lbo.mn.gov

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 | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 1,641 | 2,302 | 1,692 | 1,692 | 1,692 |
| Total | | - | 1,641 | 2,302 | 1,692 | 1,692 |
| Biennial Total | | | 3,943 | 3,384 | | |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| General Fund | - | 1,745 | 2,509 | 1,899 | 1,899 | 1,899 |
| Total | | - | 1,745 | 2,509 | 1,899 | 1,899 |
| Biennial Total | | | 4,254 | 3,798 | | |
| 2 - Revenues, Transfers In* | | | | | | |
| General Fund | - | 104 | 207 | 207 | 207 | 207 |
| Total | | - | 104 | 207 | 207 | 207 |
| Biennial Total | | | 311 | 414 | | |

Bill Description

Bill Description

This bill requires all employers in Minnesota to accrue Earned Sick and Safe Time (ESST) for qualifying employees and allows employees to use the accrued benefit for themselves, certain eligible family members, and one designee. ESST 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 adds to Minn. Stat. § 181.032 a requirement for employers to include on earnings statements the total number of earned sick and safe time hours accrued and available for use under this bill and the total number of earned sick and safe time hours used during the pay period.

Article 1, section 2 adds to Minn. Stat. § 181.942 providing an employee the right to return to their former position after taking leave provided for in the bill.

Article 1, section 3 adds to Minn. Stat. § 181.9436 requiring DLI to develop an educational poster for employers stating employees' rights under ESST

Article 1, section 4 creates Minn. Stat. §§ 181.9445, which contains the new ESST definitions. Important definitions include:

- Subd. 5. Defines “employee” as a person who works at least 80 hours in a year for the employer, including a temporary employee but excludes the following:

- o Independent contractors, or

- o Employees of air carriers as flight deck or cabin crew members who are subject to certain federal laws, work less than a majority of their hours in Minnesota, and are provided with paid leave equal to or exceeding the amounts provided for in this bill.

- Subd. 6. 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. Employer does not include the United States government. With regard to leasing companies or professional employer organizations, the tax paying employer is still the employer. In addition, with regard to individual providers of direct support services, the

employer includes a participant and the participant's representative.

- Subd. 7. Defines "family member" as including:
 - o an employee's child (or child to whom the employee stands/stood in loco parentis); spouse or registered domestic partner; sibling (including step and children-in-law); parent (including adoptive, foster, step, and in loco parentis); grandchild; or grandparent; niece/nephew; aunt/uncle, child-in-law, or sibling-in-law, including these relatives of an employee's spouse or registered domestic partner.
 - o any other individual related to the employee by blood or whose close association is equivalent to a family relationship; and
 - o up to one individual annually, designated by the employee.
- Subd. 8. Defines a health care professional.

Article 1, section 5 creates Minn. Stat. §§ 181.9446, which includes provisions on the accrual of ESST:

- Covered employees accrue a minimum of one hour of ESST for every 30 hours worked up to a maximum of 48 hours per year unless the employer agrees to a higher amount.
- Employers must permit employees to carry over to the following year up to 80 hours of accrued ESST, unless the employer agrees to a higher amount.
 - o Alternatively, the employer can provide use of earned sick and safe time for the year that meets or exceeds the requirements of this section that is available for the employee's immediate use at the beginning of the subsequent year as follows:
 - § 48 hours if an employer pays an employee for unused sick and safe time at the end of a year at the employee's regular hourly rate, or
 - § 80 hours if the employer does not pay for unused sick and safe time at the end of a year at the same or greater than the employee's hourly rate.
- ESST begins to accrue at the commencement of employment.
- Employees may use ESST as soon as it is accrued.

Article 1, section 6 creates Minn. Stat. §§ 181.9447, which includes provisions on the use of ESST as well as anti-retaliation provisions, notice and posting requirements.

- Subd. 1. Defines eligible use. Employees may use ESST 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.

For purposes of this subdivision, a public emergency includes a declared emergency as defined by section 12.03 or a local emergency under section 12.29.

- Subd. 2 Permits employers to require reasonable notice of the need for use of ESST and employers may, in certain circumstances, require documentation that leave taken under ESST is a qualifying leave. If an employer requires notice of need for the leave, they are required to have a written policy with reasonable procedures for employees to provide notice and provide a written copy of the policy to employees.

- Subd. 3. Permits employers to require reasonable documentation that ESST is covered by subd. 1 if an employee uses leave for more than 3 consecutive days. Such documentation may include a signed statement by a health care professional, or in some cases, a written statement from the employee indicating the need to use ESST. Statements from employees may be written in the employee's first language and do not need to be notarized.
 - Subd. 4. Employers cannot require employees to find replacement workers as a condition of an employee being able to use ESST.
 - Subd. 5. ESST can be used in the smallest increment of time tracked by an employer's payroll system, presuming it is not more than four hours.
 - Subd. 6. Prohibits employers from retaliating against a person who requested or used ESST, requested a statement of accrued ESST, or made a complaint or filed an action to enforce a right to ESST. Employers cannot count ESST as absences for purposes of attendance policies or point systems, or otherwise interfere with employees taking leave under this law.
 - Subd. 7. Employees are entitled to return to the same or comparable position, at the same rate of pay with the same benefits after taking ESST.
 - Subd. 8. Employees may return part-time upon agreement with the employer without giving up the right to return to employment at the end of taking ESST.
 - Subd. 9. Employers must notify employees of their rights and remedies under this law by including a section in any employee handbook and by posting either in person or electronically in a conspicuous place. Employers must provide employees a notice in English and the primary language of the employee at the commencement of employment.
 - o DLI must prepare a uniform employee notice form for employers to use that provides notice information as required by this section in the 5 most common languages spoken in Minnesota. DLI must also provide a copy of the uniform employee notice in any language spoken by an employee if the employer requests it from DLI.
 - Subd. 10. Upon request, employers must provide employees with the following information such as through a paystub or online system:
 - o Employee's amount of:
 - § Earned sick and safe time available to the employee
 - § Used earned sick and safe time
 - Subd. 11. Employers are required to keep accurate records of earned sick and safe time accruals and uses and permit an employee to inspect these records.
 - Subd. 12. Employer confidentiality and nondisclosure requirements regarding health information of employees.
- Article 1, section 7 creates Minn. Stat. §§ 181.9448, which includes provisions regarding the effect on other laws or policy.
- Subd. 1. Employers are not prohibited from granting more generous leave benefits, including through collective bargaining, nor does this section preempt other laws providing greater ESST protections. Employers who provide ESST under a paid time off or paid leave policy that meets minimum requirements of this law are not required to provide additional ESST. ESST requirements under this law may be waived by a collective bargaining agreement with a bona fide building and construction trades labor organization if they make clear reference to the law and that they are waiving application of the law to employees. Employers may allow employees to donate ESST to another employee and may advance ESST to an employee before accrual.
 - o Nothing in article 1, section 4 through this section 7 should be construed to create any power or duty in conflict with federal law.
 - Subd. 2. Employers are not required to pay employees for unused ESST after the employee leaves employment.
 - Subd. 3. 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 8 creates severability of provisions of this act in the event any part is judged to be invalid.

Article 1, section 9 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 10 sets an effective date of 1/1/2024.

Article 2 Sections 1 amends 177.27, subd 2 to increase civil penalty from up to \$1,000 to up to \$10,000 for each failure to submit or deliver records as required by DLI.

Article 2 Sections 2 adds the newly created statute in list of statutes in which DLI has authority to issue compliance orders.

This section goes into effect 1/1/24

Article 2 Section 3 amends 177.27, subd 7 to increase civil penalties from up to \$1,000 to up to \$10,000 for each violation of ESST law for each employee.

Article 2 Section 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:

- Subd. 2. provides that the commissioner may adopt rules to carry out Minn. Stat. §§ 177.50 and 181.9445 to 181.9448.
- Subd. 3. creates a private right of action to recover damages under 181.944 with a 3-year statute of limitation for persons injured by a violation of Minn. Stat. § 181.9445 to 181.9448 that includes individual remedies through civil action to recover general and special damages along with costs and attorney fees.
- Subd. 4. gives DLI's commissioner the ability to make grants to community organizations for the purposes of outreach and education to employees. CBOs must be selected based on experience, capacity, and relationships in high-violation industries.
- Subd. 5. requires DLI's commissioner to submit an annual report to the legislature, reporting violations of Minn. Stat. § 181.9445 to 181.9448 and an analysis of noncompliance including patterns by employer, industry, or county; and
- Subd. 6. 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.
- The section takes effect 1/1/24, except that the commissioner is authorized to begin rulemaking and grant-making the day after enactment.

Article 2 Sec. 5 adds Minn. Stat. § 181.9445 to 181.9448 to 181.944 providing individual remedies through civil action to recover any and all damages along with costs and attorney fees. This section takes effect 1/1/24

Article 3, section 1 appropriates the following:

- \$1,445,000 in fiscal year 2024, \$2,209,000 in fiscal year 2025, and \$1,899,000 in fiscal year 2026 from the general fund to DLI for enforcement
- \$300,000 in fiscal year 2024 and \$300,000 in fiscal year 2025 from the general fund to DLI for grants to community organizations. This is a one-time appropriation.
- Other appropriations to MMB and the House of representatives.

Article 4 addresses medical assistance rates for employers of direct care workers and directs DHS to increase the medical assistance reimbursement rates of employers who employ direct care workers sufficient enough to cover additional costs to employers for direct care workers ESST.

Assumptions

Earned Sick and Safe Time is a new requirement for Minnesota employers, though some employers in the cities of Minneapolis, St. Paul, Duluth, and as of July 1, 2023, Bloomington, are subject to earned sick and safe time ordinances. 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. DLI will translate this notice into the top 5 languages in Minnesota. If an employer asks DLI to translate the notice into another language and DLI fails to do so, the employer is not held liable for failure to provide the notice to the employee in their native language.

DLI will award \$300,000 grants to community organizations in each of FY24 and FY25 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
- 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 FY24 to develop and implement the training and outreach materials before January 1, 2024.

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 FY2025. DLI assumes one large rulemaking at \$310,248 in FY2025.

Enforcement

To estimate the number of inquiries and complaints to DLI related to ESST, 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 ESST. 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 time worker protections that would run concurrent with the state ESST. Therefore, DLI assumes that not all workers in these local jurisdictions would contact DLI for violations, but rather their local regulator. While the City of Duluth also has an ESST ordinance it is less protective than proposed in this bill, and the City of Bloomington's ordinance is not in effect until July 1, 2023, so DLI assumes workers in those local jurisdictions would contact DLI for violations. 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

| | |
|--|-----------|
| Estimated remainder number of workers/jobs in Minnesota: | 2,373,000 |
| 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 |
| Estimated remainder number of workers/jobs in Minnesota: | 2,373,000 |
| Estimated total number of workers/jobs in Minnesota: | 2,543,000 |

Determining Number of Inquiries to DLI: $2,543,000 \times 0.33\%$ (rate of inquiries) = approximately 8,392 annually

Determining Number of Complaints to DLI: $2,543,000 \times 0.07\%$ (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).

The Department will also need 2.0 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 ESST 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 ESST. The estimated one-time cost to implement ESST into the IT system is \$13,000.

DLI anticipates adding 14 additional user licenses related to ESST for a cost of \$8,400 annually.

Legislative Report

DLI's case management system will track violations associated with Minn. Stat. 181.9445 181.9448. This includes compiling the data, analyzing trends, and preparing the legislative report. DLI anticipates the costs associated with the annual legislative report to be immaterial.

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 ESST. Each year the Department assesses approximately \$17,500 in record penalties and collects approximately \$15,000 from employers on closed cases. 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 this 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 ESST, 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 48 hours of ALJ time at the currently approved billable rate of \$245 per hour. Total estimated costs for OAH are \$11,760 annually.

Expenditure and/or Revenue Formula

| Labor Investigator Sr (MAPE-12L) | 2024 | 2025 | 2026 | 2027 |
|------------------------------------|----------------|------------------|------------------|------------------|
| FTE | 6.80 | 9.6 | 9.6 | 9.6 |
| Salary per FTE (midpoint) | 72,858 | 77,293 | 77,293 | 77,293 |
| Fringe Benefits (35% of Salary) | 25,500 | 27,053 | 27,053 | 27,053 |
| Indirect (22.89% of Salary/Fringe) | 22,514 | 23,885 | 23,885 | 23,885 |
| Salary / Fringe / Indirect | 821,933 | 1,231,014 | 1,231,014 | 1,231,014 |
| Non-Personnel Services | 76,575 | 109,066 | 109,066 | 109,066 |
| Cumulative Cost | 898,508 | 1,340,080 | 1,340,080 | 1,340,080 |

| State Program Admin Director (MMA-21K) | 2024 | 2025 | 2026 | 2027 |
|--|------|------|------|------|
| | | | | |

| | | | | |
|------------------------------------|---------|---------|---------|---------|
| | | | | |
| FTE | 1 | 1 | 1 | 1 |
| Salary per FTE (midpoint) | 92,662 | 98,303 | 98,303 | 98,303 |
| Fringe Benefits (35% of Salary) | 32,432 | 34,406 | 34,406 | 34,406 |
| Indirect (22.89% of Salary/Fringe) | 28,634 | 30,377 | 30,377 | 30,377 |
| Salary / Fringe / Indirect | 153,728 | 163,086 | 163,086 | 163,086 |
| Non-Personnel Services | 13,261 | 13,361 | 13,361 | 13,361 |
| Cumulative Cost | 166,989 | 176,447 | 176,447 | 176,447 |

| Office & Admin Spec Sr - AFSCME 64L | 2024 | 2025 | 2026 | 2027 |
|--|-------------|-------------|-------------|-------------|
| FTE | 2 | 2 | 2 | 2 |
| Salary per FTE (midpoint) | 50,843 | 53,938 | 53,938 | 53,938 |
| Fringe Benefits (35% of Salary) | 17,795 | 18,878 | 18,878 | 18,878 |
| Indirect (22.89% of Salary/Fringe) | 15,711 | 16,668 | 16,668 | 16,668 |
| Salary / Fringe / Indirect | 168,699 | 178,968 | 178,968 | 178,968 |
| Non-Personnel Services | 14,552 | 14,752 | 14,752 | 14,752 |
| Cumulative Cost | 183,251 | 193,720 | 193,720 | 193,720 |

| State Program Admin Coord (MAPE-18L) | 2024 | 2025 | 2026 | 2027 |
|---|-------------|-------------|-------------|-------------|
| FTE | 1 | 1 | 1 | 1 |
| Salary per FTE (midpoint) | 90,409 | 93,573 | 93,573 | 93,573 |
| Fringe Benefits (35% of Salary) | 31,643 | 32,751 | 32,751 | 32,751 |
| Indirect (22.89% of Salary/Fringe) | 27,938 | 28,916 | 28,916 | 28,916 |
| Salary / Fringe / Indirect | 149,990 | 155,240 | 155,240 | 155,240 |
| Non-Personnel Services | 13,261 | 13,361 | 13,361 | 13,361 |
| Cumulative Cost | 163,251 | 168,601 | 168,601 | 168,601 |

| Cumulative Expenditures | 2024 | 2025 | 2026 | 2027 |
|--|-------------|-------------|-------------|-------------|
| Labor Investigator Sr (MAPE-12L) | 898,508 | 1,340,080 | 1,340,080 | 1,340,080 |
| State Program Admin Director (MMA-21K) | 166,989 | 176,447 | 176,447 | 176,447 |
| State Program Admin Coord (MAPE-18L) | 163,251 | 168,601 | 168,601 | 168,601 |
| Office & Admin Spec Sr - AFSCME 64L | 183,251 | 193,720 | 193,720 | 193,720 |
| OAH Legal Fees | 11,760 | 11,760 | 11,760 | 11,760 |

| | | | | |
|--|-----------|-----------|-----------|-----------|
| Major Rulemaking | - | 310,248 | - | - |
| Grants | 300,000 | 300,000 | - | - |
| IT Case Mgmt. Build | 13,000 | - | - | - |
| IT Case Mgmt. User License/Maintenance | 8,400 | 8,400 | 8,400 | 8,400 |
| Cumulative Expenditures | 1,745,159 | 2,509,256 | 1,899,008 | 1,899,008 |

| Revenues | 2024 | 2025 | 2026 | 2027 |
|---------------------------------------|---------|---------|---------|---------|
| Records Penalties - Existing Programs | 42,500 | 85,000 | 85,000 | 85,000 |
| Records Penalties - ESST | 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 new businesses emerge in Minnesota and new employees enter the workforce, legal cases are settled, 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 employer size or allowable leave and/or requires modifications to their HR system to track the change in leave requirements.

References/Sources

NA

Agency Contact: Kate Perushek 651-284-5255

Agency Fiscal Note Coordinator Signature: Jacob Gaub

Phone: 652-284-5812

Date: 3/28/2023 12:51:27 PM

Email: jacob.gaub@state.mn.us

HF19 - 7A - Earned Sick and Safe Time

Chief Author: **Sandra Pappas**
 Committee: **Finance**
 Date Completed: **3/28/2023 2:41:35 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Administrative Hearings | - | - | - | - | - | - |
| Total | - | - | - | - | - | - |
| Biennial Total | | | - | | | - |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|--------|--------|----------|--------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| 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.

LBO Signature: Chloe Burns **Date:** 3/28/2023 8:00:14 AM
Phone: 651-297-1423 **Email:** chloe.burns@lbo.mn.gov

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 | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| Administrative Hearings | - | - | - | - | - | - |
| Total | | - | - | - | - | - |
| Biennial Total | | | | - | | - |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| Administrative Hearings | - | | 12 | 45 | 12 | 12 |
| Total | | - | 12 | 45 | 12 | 12 |
| Biennial Total | | | | 57 | | 24 |
| 2 - Revenues, Transfers In* | | | | | | |
| Administrative Hearings | - | | 12 | 45 | 12 | 12 |
| Total | | - | 12 | 45 | 12 | 12 |
| Biennial Total | | | | 57 | | 24 |

Bill Description

HF19-7A 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 Sec. 4 Earned Sick and Safe Time Enforcement.

Assumptions

The Office of Administrative Hearings (OAH) has used DLI's estimate to project that one matter will be appealed to OAH under Art. 2, Sec. 2, subd. 4 Compliance Orders.

OAH assumes that each hearing will require an estimated 48 hours of administrative law judge (ALJ) time at the currently approved billable rate of \$245 per hour (see Minn. Stat. § 16A.126, subd. 1 (2022)).

DLI assumes a program of this size will require one large rulemaking at \$314,298 in FY2025. 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 \$314,298, \$33,075 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 \$245 per hour (see Minn. Stat. § 16A.126, subd. 1 (2022)).

Expenditure and/or Revenue Formula

Estimated 48 hours of ALJ time at \$245/hr = \$11,760

Estimated one appeal referred to OAH per fiscal year = \$11,760

Estimated 135 hours of ALJ time for rulemaking activities in FY24 related to implementing the requirements of Sec. 4 Earned Sick and Safe Time Enforcement = 135 hours x \$245/hr = \$33,075 charged to DLI in FY2025 pursuant to the requirements of Minn. Stat. § 14.53.

FY25 Total Expenditures - \$11,760 + \$33,075 = \$44,835

FY24, FY26 and subsequent years - \$11,760

Long-Term Fiscal Considerations

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

Local Fiscal Impact

References/Sources

Agency Contact: Denise Collins

Agency Fiscal Note Coordinator Signature: Denise Collins

Phone: 651-3617875

Date: 3/27/2023 9:55:39 PM

Email: denise.collins@state.mn.us

HF19 - 7A - Earned Sick and Safe Time

Chief Author: **Sandra Pappas**
 Committee: **Finance**
 Date Completed: **3/28/2023 2:41:35 PM**
 Agency: **Legislature**

| 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 18 | - | - | - | - |
| Total | - | 18 | - | - | - | - |
| Biennial Total | | | 18 | | | - |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|--------|--------|----------|--------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | - | - | - | - |
| 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: Chloe Burns **Date:** 3/28/2023 8:28:48 AM
Phone: 651-297-1423 **Email:** chloe.burns@lbo.mn.gov

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 | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 18 | - | - | - | - |
| Total | - | 18 | - | - | - | - |
| | Biennial Total | | 18 | | | - |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| General Fund | | | | | | |
| Expenditures | - | 19 | 1 | 1 | 1 | 1 |
| Absorbed Costs | - | (1) | (1) | (1) | (1) | (1) |
| Total | - | 18 | - | - | - | - |
| | Biennial Total | | 18 | | | - |
| 2 - Revenues, Transfers In* | | | | | | |
| General Fund | | | | | | |
| Total | - | - | - | - | - | - |
| | Biennial Total | | - | | | - |

Bill Description

The bill requires employers, as defined in the bill, to make sick and safety paid accrual leave available to employees. The bill defines employee as any person who is employed, including temporary and part-time, and works for at least 80 hours in a year. Employees at the start of their hire accrue a minimum of one hour of earned sick and safe time for every 30 hours worked up to a maximum of 48 hours accrued a year unless an employer agrees to a higher amount. Employees can carry over any unused accrued sick and safe leave into the following year up to a maximum of 80 hours any time unless the employer agrees to a higher amount.

Employees who are exempt from overtime under US Code title 29, section 213(a)(1) need to work 40 hours / work week for accruing sick and safe time except that an employee whose normal work week is less than 40 hours will accrue based on their normal schedule.

Employers must supply employees with a notice in English and other appropriate languages regarding sick and safe leave. Employers must post a notice and must include terms in the employee handbook if distributed by an employer. Employers must retain records of hours taken. Employers can adopt or retain more generous sick and safe time policies. Employers that provide earned sick and safe time under a paid time off/paid leave are not required to provide additional sick and safe time. Employers may have a donation leave policy or advance sick and safe time for new hires.

Employers are not required to payout sick and safe accruals upon separation of employment. Transferring employees within the same employer are entitled to all their prior unused accrued sick and safety leave. Unused accrued sick and safety leave is reinstated to employees that are rehired by the same employer within 180 days.

Fines up to \$10,000 may be assessed to employers that fail to provide documents. Department of Labor and Industry must submit an annual report to the legislature listing noncompliance.

Article 3 states appropriations to Minnesota Department of Labor and Industry, Minnesota Management and Budget (MMB) for purposes associated with enactment of the law. Included is an appropriation of \$18,000 for FY24 to the Minnesota House of Representatives for necessary compliance modifications to its timecard and human resource system.

Assumptions

1. The Minnesota House of Representatives, Minnesota Senate, Office of the Legislative Auditor (OLA) and Legislative

Coordinating Commission (LCC) are included in the bill definition for employer.

2. Elected legislative members of the House and Senate are not considered employees and do not accrual leave.
3. The Legislative Plan for Employee Benefits applies to the employees of the House, Senate, LCC and employees of the OLA that serve in unclassified civil service. The accrual benefits for OLA employees that serve in classified positions are governed by either the Commissioner's Plan or Managerial Plan.
4. The paid leave accrual of the Commissioner's Plan, Managerial Plan and Legislative Plan for Employee Benefit meet or exceeds the paid leave provided in the bill. The bill does provide some eligible use of accrued leave that are not currently in the three plans (care for stepsiblings, etc.). Our assumption is that the accrued plan provisions for each of the three plans would be amended to include the additional eligible uses. Any cost associated with the amendment of the Commissioner's Plan and the Managerial Plan will be addressed in the fiscal note for MMB. The nominal cost associated with the amendment of the Legislative Plan for Employee Benefits will be absorbed. Any use of the expanded eligibility leave use by legislative staff that is already eligible for accruals will be nominal and absorbed by the House, Senate, OLA or LCC.
5. Temporary employees are not eligible for paid leave accrual under the Commissioner's Plan and Managerial Plan. Under the Legislative Plan for Employee Benefits, temporary employees are not eligible for accrual leave until after they have worked a full-time schedule for six months. Temporary legislative staff would be eligible for the sick and safety leave accrual and allowable use under the bill.
6. The bill has an effective date of January 1, 2024.
7. The House generally hires 57 temporary full-time staff for a duration of 12 weeks beginning mid-January. The Senate generally hires 35 temporary full-time staff for a duration of 12 weeks beginning mid-January. The OLA generally hires three full-time staff to service in classified positions annually. The LCC generally hires four part-time employees and eight full-time employees for a duration of 26 weeks beginning in December. The weighted average hourly wage for all temporary staff of the legislature is \$22.28.
8. For this note we are using an assumption of 5.0% of the newly eligible legislative temporary employees will take sick and safety leave. The 5.0% is the same assumption rate that MMB is using for the fiscal note for the executive branch.
9. With 92% of the temporary hires having shorter employment durations, we are assuming that the temporary legislative employees will only be eligible to take 24 hours of sick and safety leave.
10. The House, Senate, OLA and LCC would not hire additional temporary staff to cover the duties of the temporary staff that take the leave.
11. The projected cost of total legislative temporary employees taking the sick and safety leave is nominal and is absorbed. See table in Expenditure and/or Revenue Formula for calculation of projected cost.
12. Cost associated with the posting notices requirements of the bill will be nominal and absorbed.
13. The bill requires employers to record sick and safety leave use. The Senate, OLA and LCC use the state timecard system and state HR system for its employees. Any modifications to the state systems for the recording requirements will be addressed by MMB. The House uses an independent system for timecards and HR records. The House would incur a one-time cost of \$18,000 in FY24 to modify both systems to comply with the bill's recording requirements.

Expenditure and/or Revenue Formula

The following table shows the projected annual cost of all temporary legislative employees taking sick and safety leave detailed in assumptions 7-11. The nominal cost is absorbed.

| | | 5.00% | | | |
|-----|---------------|----------------------------|-------------|------------------------|----------------------------------|
| | Number of EEs | # of Assumed EEs taking SL | Hourly Wage | Assumed SL Hours Taken | Total Cost of Temp EEs Taking SL |
| OLA | 3 | 0.15 | 18.50 | | |

| | | | | | |
|--|------------|------------|----------------|-----------|----------------|
| Senate | 35 | 0.875 | 23.55 | | |
| House | 57 | 1.425 | 22.50 | | |
| LCC | 5 | 0.25 | 18.50 | | |
| Total (hourly wage is weighted average) | 100 | 2.7 | \$22.28 | 24 | \$1,444 |

The following table shows the total cost.

| Cost Category | FY24 | FY25 | FY26 | FY27 |
|---|----------------|----------------|----------------|----------------|
| Projected Temp Staff Leave Cost (rounded) | 1,000 | 1,000 | 1,000 | 1,000 |
| House Timecard & HR System Cost | 18,000 | 0 | 0 | 0 |
| Total Cost | 19,000 | 1,000 | 1,000 | 1,000 |
| Total Absorbed cost | (1,000) | (1,000) | (1,000) | (1,000) |
| Net Total Cost | 18,000 | 0 | 0 | 0 |

Long-Term Fiscal Considerations

N/A

Local Fiscal Impact

N/A

References/Sources

Betty Myers, Minnesota Senate

Barb Juelich, Minnesota House of Representatives

Eric Jacobson, Office of the Legislative Auditor

Michelle Weber, Legislative Coordinating Commission

Agency Contact: Diane Henry-Wangenstein

Agency Fiscal Note Coordinator Signature: Diane Henry

Phone: 651-296-1121

Date: 3/28/2023 3:49:17 AM

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HF19 - 7A - Earned Sick and Safe Time

Chief Author: **Sandra Pappas**
 Committee: **Finance**
 Date Completed: **3/28/2023 2:41:35 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 147 | 264 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 | 499 |
| Total | - | 391 | 763 | 763 | 763 | 763 |
| Biennial Total | | | 1,154 | | | 1,526 |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|--------|--------|----------|--------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| 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: Susan Nelson **Date:** 3/28/2023 1:52:28 PM
Phone: 651-296-6054 **Email:** susan.nelson@lbo.mn.gov

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 | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 147 | 264 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 | 499 |
| Total | - | 391 | 763 | 763 | 763 | 763 |
| | Biennial Total | | 1,154 | | 1,526 | 1,526 |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| General Fund | - | 147 | 264 | 264 | 264 | 264 |
| All Other Funds | - | 244 | 499 | 499 | 499 | 499 |
| Total | - | 391 | 763 | 763 | 763 | 763 |
| | Biennial Total | | 1,154 | | 1,526 | 1,526 |
| 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 2022 excluding Judicial and Legislative branches.

Total executive branch employment (headcount) is not assumed to grow (average annual growth from FY 2011 through FY 2022 was negative 0.09 percent).

Executive branch per employee wages, inclusive of benefits, will grow by 2.47 percent annually, reflecting the average annual growth from FY 2011-FY 2022. No growth is assumed after FY 2023.

In FY 2022, 34.3 percent of executive branch employee compensation costs were paid from the general fund, and 65.7 percent were paid from all other state 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 2024): \$3,000 (general fund)

| Year | Cost |
|------|------|
|------|------|

| | |
|--------|---------|
| FY2024 | \$3,000 |
| FY2025 | \$0 |
| FY2026 | \$0 |
| FY2027 | \$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 and an expectation that there will be impact with this bill, MMB assumes that 5% 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. This figure has dropped somewhat as of December 2022 due to historically high vacancy rates. MMB assumes 6,193 is a more reasonable assumption for the remainder of the budget horizon. The Departments of Human Services, Corrections, and Veterans Affairs account for approximately 91 percent of these employees.

* As of December 2022, the average hourly wage for these employees is \$29.33. Fringe benefits are assumed to be approximately 36 percent of wages, which increases this figure to \$39.89. The average overtime hourly wage, including the 36 percent-of-salary fringe estimate, is \$59.83. This fiscal note assumes 2.47 percent annual wage growth for a new base of \$40.87 per hour regular and \$61.31 per hour overtime in FY 2024.

* Approximately 5% of the projected 6,193 multi-shift employees will annually use the expanded sick leave benefits provided in the bill (approximately 310 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 August 1, 2023, making the effective date 180 days later, or approximately February 1, 2024, and that use (in hours) of the expanded sick leave benefits provided in the bill is limited by 50 percent in the first year of implementation (FY 2024) to provide time for accrual.

| 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 cost by fiscal year (sum of G in each fiscal year) |
|-------------|---|--------------------------------|-------------------------|------------------------------|--|-------------------------------------|--|
| 2024 | 310 | 24 | 7440 | 39.89 | 3720 | 148,386 | 370,966 |
| | | | | 59.83 | 3720 | 222,580 | |
| 2025 | 310 | 48 | 14880 | 40.87 | 7440 | 304,103 | 760,257 |

| | | | | | | | |
|------|-----|----|-------|-------|------|---------|---------|
| | | | | 61.31 | 7440 | 456,154 | |
| 2026 | 310 | 48 | 14880 | 40.87 | 7440 | 304,103 | |
| | | | | 61.31 | 7440 | 456,154 | 760,257 |

It is assumed that 34.3 percent of the costs calculated above will be paid from the general fund and 65.7 percent from all other state funds based on the overall allocation for all executive branch state agency employee compensation costs in FY 2022. The cost by fund may vary significantly by impacted state agency.

| Fiscal Year | Total cost | Percentage allocation by state fund | Annual cost, by fund |
|-------------|------------|-------------------------------------|----------------------|
| FY 2024 | 370,966 | 34.3% general fund | \$127,241 |
| | | 65.7% all other funds | \$243,725 |
| FY 2025 | 760,257 | 34.3% general fund | \$260,768 |
| | | 65.7% all other funds | \$499,489 |
| FY 2026 | 760,257 | 34.3% general fund | \$260,768 |
| | | 65.7% all other funds | \$499,489 |

3.) System Programming Costs: MMB estimates that the 100 hours of time will be needed to modify SEMA4 to accommodate system changes needed to comply with bill language. This includes COBOL/SQR batch program logic changes to existing processes and payroll modifications. The cost for this is estimated as follows for FY24:

Programmer costs (Information Technology Specialist 5 at MNIT@MMB): Approximately 100 hours x \$60.70 per hour x 1.3210 (fringe) x 1.1717 (overhead) = \$9,395

Functional costs (Finance Specialist 3 in MMB Statewide Payroll Services Unit): Approximately 100 hours x \$47.65 per hour x 1.3210 (fringe) x 1.1717 (overhead) = \$7,375

Ongoing maintenance costs in FY25 and thereafter are estimated as follows:

Reapplication of system modifications (Information Technology Specialist 5 at MNIT@MMB): Approximately 25 hours x \$60.70 per hour x 1.3210 (fringe) x 1.1717 (overhead) = \$2,348

Functional costs (Finance Specialist 3 in MMB Statewide Payroll Services Unit): Approximately 10 hours x \$47.65 per hour x 1.3210 (fringe) x 1.1717 (overhead) = \$738

Total costs

In thousands

| | | | | |
|---------------------|---------|---------|---------|---------|
| Total costs | | | | |
| <i>In thousands</i> | | | | |
| MMB | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
| General fund | \$0 | \$20 | \$3 | \$3 |

| 24/7 State Agencies | FY 2023 | FY 2024 | FY 2025 | FY 2026 |
|-----------------------------|---------|---------|---------|---------|
| General fund | \$0 | \$127 | \$261 | \$261 |
| All other funds | \$0 | \$244 | \$499 | \$499 |
| General fund grand total | \$0 | \$147 | \$264 | \$264 |
| All other funds grand total | \$0 | \$244 | \$499 | \$499 |

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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Phone: 612-659-6873

Date: 3/28/2023 10:29:07 AM

Email: ronika.rampadarat@state.mn.us

HF19 - 7A - Earned Sick and Safe Time

Chief Author: **Sandra Pappas**
 Committee: **Finance**
 Date Completed: **3/28/2023 2:41:35 PM**
 Agency: **Supreme Court**

| 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 | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 1 | 427 | 388 | 388 | |
| Total | - | 1 | 427 | 388 | 388 | |
| Biennial Total | | | 428 | | 776 | |

| Full Time Equivalent Positions (FTE) | Biennium | | | Biennium | |
|--------------------------------------|----------|----------|----------|----------|----------|
| | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | - | 3 | 3 | 3 |
| Total | - | - | 3 | 3 | 3 |

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: Karen McKey **Date:** 3/27/2023 10:56:13 PM
Phone: 651-284-6429 **Email:** karen.mckey@lbo.mn.gov

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 | | FY2023 | FY2024 | FY2025 | FY2026 | FY2027 |
| General Fund | - | 1 | 427 | 388 | 388 | 388 |
| Total | | - | 1 | 427 | 388 | 388 |
| Biennial Total | | | | 428 | | 776 |
| 1 - Expenditures, Absorbed Costs*, Transfers Out* | | | | | | |
| General Fund | - | 1 | 494 | 461 | 461 | 461 |
| Total | | - | 1 | 494 | 461 | 461 |
| Biennial Total | | | | 495 | | 922 |
| 2 - Revenues, Transfers In* | | | | | | |
| General Fund | - | - | 67 | 73 | 73 | 73 |
| Total | | - | - | 67 | 73 | 73 |
| Biennial Total | | | | 67 | | 146 |

Bill Description

HF19-7A requires all employers, except the United States government, to provide Earned Sick and Safe Leave (ESSL) for qualifying employees who work more than 80 hours a year for an employer. At a minimum, employees must earn one hour of paid ESSL time for every 30 hours worked, up to at least 48 hours per year. Employees must be able to carry over at least 80 accrued hours of ESSL time from year to year, or in the alternative an employer may pay an employee for unused earned sick and safe time at the end of a year. Accrual begins when a qualified employee begins employment, and may use earned sick and safe time as it is accrued. Salaried employees, who are exempt from the provisions of federal overtime laws, are deemed to work 40 hours per week for purposes of ESSL accrual, except if the normal workweek is less than 40 hours. Employees do not include independent contractors who have worked for the employer.

Eligible uses of ESSL, include: 1) the employee’s mental or physical illness, treatment, or preventative care; (2) care of a sick family member or a family member in need of preventative care or treatment; (3) absence related to domestic abuse, sexual assault, or stalking of the employee or family member; (4) closure of the employee’s workplace due to weather or public emergency or closure of a family member’s school or care facility due to weather or public emergency; (5) employee’s inability to work or telework when prohibited by employer from working due to potential transmission of a communicable illness related to a public health emergency or pending test results or medical diagnosis; and (6) a determination by a health care provider that the employee or family member is at risk of infecting others with a communicable disease. Employees receive their regular hourly rate of employment for ESSL.

The bill requires that employees returning from ESSL must be able to return to their former positions, with the same pay and benefits, including seniority and accrued pre-leave benefits and any automatic pay adjustments.

Employers are not required to pay out any unused accrued ESSL time upon separation. Employees hired back by the same employer within 180 days of termination are entitled to reinstatement of accrued ESSL time.

Employers are required to post notice of employee rights to current and future employees.

Employers are prohibited from retaliating against an employee for taking ESSL. Employers who violate any sections over which the Department of Labor and Industry has enforcement authority may be subject to civil penalties.

This bill creates a private cause of action with a three-year statute of limitation for persons under Minn. Stat. § 177.50, subd. 3, to recover damages under Minn. Stat. § 181.944 including all damages recoverable by law, along with costs and disbursements, reasonable attorney’s fees, and may receive injunctive and other equitable relief as determined by the court. Individual remedies in Minn. Stat. § 181.944 apply to causes of action accruing on and after January 1, 2024.

This bill is effective January 1, 2024.

Assumptions

For most judicial branch employees covered under the collective bargaining agreements (CBAs) and human resource rules (Judicial Branch HR Rules) applicable to unrepresented employees, the amount of and accrual rate of paid sick leave provided in these CBAs and Judicial Branch HR Rules 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 judicial branch employees (e.g., temporary and part-time below a certain threshold number of hours) are not currently eligible for paid sick leave under CBAs or Judicial Branch HR Rules 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 CBAs or compensation plans (e.g., weather and public emergencies for 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 extends the benefit to certain judicial branch part-time employees and temporary employees who are not normally eligible for sick leave benefits or who accrue at a rate under 1 hour of ESSL for 30 hours worked under CBAs and Judicial Branch HR Rules. This fiscal note does not quantify any potential costs associated with these employees taking leave. It is assumed that the direct cost of any judicial branch employee who is: 1. Not currently eligible for paid leave under the CBAs and Judicial Branch HR Rules; 2. Newly eligible for paid leave under this bill; and 3. Choosing to replace unpaid leave they may have otherwise taken with paid leave under bill; is negligible and is not quantified in this fiscal note. This is a small subset of judicial branch employees.

It is assumed use of accrued leave due to an employee's health conditions, care of most family members, and absences due to domestic abuse or stalking, and emergency closure leave will not increase above current levels since these already are allowed uses of sick leave under CBAs, Judicial Branch HR Rules, and/or Minnesota Statutes Section 181.9413. There are no reliable data upon which to base an estimate of the number of employees who will use any of the expanded benefits. The expanded leave provided in this bill may or may not result in additional costs to judicial branch. These potential costs are not reflected in this fiscal note.

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 a CBA or Judicial Branch HR Rules would be used under the bill and therefore would not be reinstated.

An employer is required to provide total number of sick and safe hours accrued and available for use and hours used during the pay period on the earnings statement for each pay period. Accrued sick leave, hours used, and hours available for use are provided to state employees on the electronic time sheet. It is assumed any changes needed to the earnings statement will be made by the office of Minnesota Management and Budget in the state payroll system.

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 or the date of employment, whichever is later. Notice must be provided in alternative languages. The judicial branch will provide the required notifications to all employees, current and future, in electronic format in English and other translated languages. These electronic notifications will meet digital accessibility requirements. In addition, the judicial branch will post notices in all workplaces.

An employee who is injured as a result of a violation of the bill may bring a cause of action in district court to recover damages, costs and disbursements, reasonable attorney's fees, and for injunctive and other equitable relief. The number of civil actions that may be filed is unknown.

For purpose of this fiscal note, the number of employment cases will be used to calculate impact. The average number of employment cases filed in district court in 2020, 2021 and 2022 was 294 cases. It is assumed that the increase in the number of district court cases filed as a result of this bill would not be more than one half of all the other employment cases filed or approximately 147 cases. It is assumed the weighted caseload value for employment cases of 503 minutes per case will apply. Assessed Judge Need = Filings x Case Weight / Judge Year Value. For purpose of this fiscal note, the Judge Year Value used is a statewide average of 78,000 minutes. An increase in case filings of 147 cases would require an increase of 1 judge Unit. (503 minutes x 147 cases divided by 78,000 minutes per year = .95 judge FTE). One additional judge unit includes a judge, court reporter and law clerk. It is assumed that this increase in cases will not require any additional court administration staff.

As the bill is not effective until January 1, 2024 and as no cause of action may occur before January, 1, 2024, it is assumed no civil case will be filed before July 1, 2024. It is assumed the civil filing fee in FY25 will be \$285. The amount

of the law library fee will depend on the county in which the case is filed.

It is assumed that there will be an increase in appellate court cases but the increase will not result in an increase of a three-judge panel.

Expenditure and/or Revenue Formula

Earnings Statement:

No costs will be incurred by the Judicial Branch to update the state payroll system. Any costs to update the state payroll system will be incurred by Minnesota Management and Budget.

Notice Requirements:

Translation costs: The bill requires employers to supply employees with a notice in English and other appropriate languages.

The Department of Labor and Industry's (DLI) will prepare a uniform employee notice form for employers to use and provide that form in the five most common languages spoken in Minnesota. Upon an employer's written request DLI will provide a copy of the uniform notice in any primary language spoken by and employee in the employer's place of business. Accordingly, the Judicial Branch assumes it will not incur translation costs.

Electronic notifications: The cost of providing the required notices by electronic means is not known but is assumed would not carry a significant cost. It is assumed that there will be no digital accessibility costs incurred for translated notices.

Printing costs: As with other employment rights notice requirements, it is assumed that notices will need to be posted in judicial branch workplaces. The cost of these notices is unknown. Comparable to the executive branch estimate, assuming a total of five language at approximately 100 court locations at a cost of \$2 per poster, it is estimated that the cost to the judicial branch is \$1,000.

Private Cause of Actions:

The private cause of action will result in an increase in the number of cases filed in district court and increase of 1 judge unit. The FY23 cost for a district court judge unit comprised of a judge, court reporter and law clerk is \$494,000 in the first year, including \$33,000 for chambers startup costs, and \$461,000 in subsequent year.

In FY25 the estimated cost of one additional district court judge unit is at least \$494,000.

In FY26 and after the estimated cost of one additional district court judge unit is at least \$461,000.

Revenue:

The fees in Minn. Stat. § 357.021 will apply to cases filed in the District Court unless a party is granted an order to proceed in forma pauperis or another exemption applies. Filing fees include the civil filing fee plus the county law library fee. Assuming district court civil filing fees will be paid in approximately 147 cases (estimated number of private causes of action filed), the increase to the state general fund is estimated to be \$73,316 (\$285 x 147 cases x 1.75 parties) per fiscal year beginning FY25.

The total increase in filing fee revenue for FY25 is estimated at \$67,210 after discounting by 1 month to account for cash flow. (\$73,316 /12 mos. = \$6,110 per month x 11 mos.) For FY26 and after filing fee revenue is estimated at \$73,316.

Long-Term Fiscal Considerations

None

Local Fiscal Impact

The increased law library fee income is unknown as each county law library has a unique fee.

References/Sources

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