



Women's Economic Security Act

Annual report

December 2021

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Executive summary

The Minnesota Department of Labor and Industry (DLI) is responsible for the enforcement of five provisions of the Women’s Economic Security Act (WESA), passed by the Legislature in 2014. WESA is a comprehensive employee protection law designed to protect and promote opportunities for women in the workplace.

The five provisions of the law enforced by DLI are:

1. Wage Disclosure Protection (Minnesota Statutes § 181.172);
2. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939);
3. Pregnancy and Parenting Leave (M.S. § 181.941);
4. Nursing Mothers (M.S. § 181.939); and
5. Sick Leave Benefits; Care of Relatives (M.S. § 181.9413).

DLI enforces employee rights under WESA through investigations of employee complaints, on-site visits to employer establishments and employee/employer outreach about WESA rights and responsibilities.

This report provides DLI investigative data and outcomes related to its enforcement of WESA for the most recent year (September 2020 through August 2021) and since the law’s adoption in spring 2014.

DLI annual WESA investigative summary

September 2020 through August 2021

Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	10	3	2
Pregnancy Accommodations	2	0	0
Pregnancy and Parenting Leave	1	1	0
Nursing Mothers	3	3	2
Sick Leave Benefits; Care of Relatives	0	0	0
Total	16	7	4

DLI cumulative WESA investigative summary

July 2014 through August 2021

Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	20	13	7
Pregnancy Accommodations	22	20	4
Pregnancy and Parenting Leave	32	32	2
Nursing Mothers	21	21	13
Sick Leave Benefits; Care of Relatives	12	12	0
Total	107	98	26

Outreach and referrals

From Sept. 1, 2020, through Aug. 31, 2021, DLI participated in 77 events that included outreach about WESA. Three of these events were specialized WESA webinars including DLI, the United States Department of Labor's Wage and Hour Division and the Minnesota Department of Health that brought together health professionals, county health offices and related nonprofit organizations.

DLI continues to maintain referral relationships with other state agencies affected by the enactment of WESA. DLI has established a formal referral process for complainants with issues related to pregnancy accommodation or possible sex/pregnancy discrimination with the Minnesota Department of Human Rights. In response to the results of DLI's contract with the Wilder Foundation in 2019 and 2020, DLI has initiated several new outreach and education efforts related to WESA. These are detailed later in this report.

Introduction

The Minnesota Women's Economic Security Act (WESA) became law on Mother's Day 2014.¹ It is a combination of 14 provisions designed to address gender equity, create new training and entrepreneurship opportunities for women, and prohibit discrimination on the basis of familial status.

WESA includes five workplace protections that are enforced by the Department of Labor and Industry (DLI):

1. Wage Disclosure Protection (M.S. § 181.172);
2. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939);
3. Pregnancy and Parenting Leave (M.S. § 181.941);
4. Nursing Mothers (M.S. § 181.939); and
5. Sick Leave Benefits; Care for Relatives (M.S. § 181.9413).

DLI is authorized to enforce these WESA laws under the commissioner's authority in M.S. § 177.27. DLI may issue an order to an employer requiring it to comply with WESA and to cease and desist from violating the law. DLI can order an employer to pay back wages and liquidated damages to an employee who has suffered a wage loss due to a violation of a WESA workplace protection. DLI can also assess a penalty of up to \$1,000 for each violation for willful or repeated activities. In addition, M.S. § 181.944 gives workers the right to sue their employer in district court for violations of WESA. As of July 1, 2019, the Minnesota Attorney General's Office also has enforcement authority over all of M.S. Chapter 181, which includes all five of these WESA laws.

In addition, effective Jan. 1, 2022, workplace protections for expectant and new parents will be expanded. Changes include the following.

¹Minnesota Session Laws 2014; Chapter 239 (www.revisor.mn.gov/laws/2014/0/Session+Law/Chapter/239/).

- Requiring nursing and lactating employees to receive paid break time to express milk at work. The change does not require currently unpaid break time, such as a meal break, to be converted to paid break time.
- Ensuring more employees have a right to request and receive needed pregnancy accommodations in the workplace, such as more frequent restroom, food and water breaks and limits to heavy lifting. This change will apply to employers with 15 or more employees; the current law applies to employers with 21 or more employees.

WESA enforcement summary

From July 2014 through August 2021, DLI completed 98 investigations of alleged violations of the five WESA provisions within its legal authority. DLI has the following observations and recommendations.

First, employers have often been unaware of their responsibilities related to WESA. However, upon learning of their responsibilities through DLI’s investigative and outreach efforts, employers typically came into compliance willingly and expeditiously. This highlights the importance of continuing DLI’s outreach and education efforts to ensure employers and employees are aware of their rights and obligations under these laws.

Second, many employees who contact DLI about WESA do not meet the strict definition of “employee” or do not work for an employer that meets the definition of “employer” under the law. The Sick Leave Benefits; Care of Relatives, and Pregnancy and Parenting Leave laws require employees to have worked for the employer for at least 12 months, although not required to be consecutive, and at least on a half-time basis during the 12-month period preceding the leave. However, one recent improvement in WESA-related coverage is that as of Jan. 1, 2022, the pregnancy accommodation law will become a part of the Nursing Mothers Act and no longer subject to the definitions set forth in the Parenting Leave law.²

Third, all Nursing Mothers accommodation complaints have been investigated by DLI within the 10-day statutory requirement. Since the inception of the Nursing Mothers law in 2014, DLI has received 21 complaints alleging failure of an employer to provide proper accommodations to nursing mothers. In each case, employers were quickly educated about the requirements of the law. When a violation was found by DLI in an investigation, each employer under review promptly came into compliance.

²Legislation passed during the first 2021 Special Session of the Minnesota Legislature repealed the Pregnancy Accommodations statute (M.S. § 181.9414) and moved the provisions of that law into the Nursing Mothers Act at M.S. § 181.939, subdivision 2, effective Jan. 1, 2022. This change also included expanding reasonable pregnancy accommodations to employers of “a person or entity that employs fifteen or more employees and includes the state and its political subdivisions.” *Id.* This new legislation prompted the Minnesota Supreme Court, on July 13, 2021, to vacate as improvidently granted the Petition for Review it had granted June 30 in the matter of *Hinrichs-Cady v. Hennepin County* thereby dismissing the appeal. *See, Hinrichs-Cady v. Hennepin County*, 961 N.W.2d 777 (Minn. 2021). The Minnesota Court of Appeals had held that employees requesting reasonable pregnancy accommodations under the Pregnancy Accommodations law were not required to meet the 12-month employment requirement set forth in the Parenting Leave and Accommodations Act, specifically M.S. § 181.940, subd. 2, to assert a claim of reasonable pregnancy accommodations being denied. *See, Hinrichs-Cady*, 943 N.W.2d 417, 423 (Minn. Ct. App. 2020). The court of appeals reasoned that pregnancy accommodations were “non-leave accommodations.” *Id.* at 422.

Fourth, to date, no employer has been the subject of repeat complaints to DLI for violations of any WESA provisions.

WESA laws enforced by DLI

I. Wage Disclosure Protection (M.S. § 181.172)

The Wage Disclosure Protection law prohibits employers from requiring employees to not disclose their own wages or conditions of employment. It also prohibits employers from requiring employees to sign a waiver that purports to deny their right to disclose their wages. Employers cannot take adverse employment action against employees who disclose their own wages or discuss another employee's wages that were voluntarily disclosed by that employee.

Employers that have an employee handbook are required to include notice to their employees of their rights and remedies under the wage disclosure law.

DLI has provided the following sample notice language on its website to assist employers.

***Notice to employees** – Under the Minnesota Wage Disclosure Protection law, you have the right to tell any person the amount of your own wages. Your employer cannot retaliate against you for disclosing your own wages. Your remedies under the Wage Disclosure Protection law are to bring a civil action against your employer and/or file a complaint with the Minnesota Department of Labor and Industry at 651-284-5070 or 800-342-5354.³*

From Sept. 1, 2020, through Aug. 31, 2021, DLI received 10 wage disclosure complaints. Since the law's inception, DLI has received 20 complaints alleging violation of this law.

2021 DLI case example: DLI received a complaint from an employee who stated they were disciplined for talking with coworkers about "who earned what" at work. When DLI contacted the employer, the employer stated they were unaware of the wage disclosure law, made required changes to their policies and agreed to follow the law moving forward.

There have been relatively few complaints specifically about this issue. However, during the course of other investigations, DLI has found some employers' written policies are in violation of this law. When that occurs, DLI educates the employer and provides DLI's sample written notice to employers about wage disclosure for inclusion in its employee handbook.

³See www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs.

II. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939)

The Pregnancy Accommodations law requires employers to provide reasonable accommodations to employees with health conditions related to pregnancy or childbirth.

Eligibility for pregnancy accommodation protection under WESA will change Jan. 1, 2022, to allow protections under this law for any pregnant employee who works for an employer with 15 or more employees; the law currently affords protection to those who work for employers with 21 or more employees.

Discrimination because of pregnancy is prohibited under the Minnesota Human Rights Act regardless of the employer's size.

Eligible pregnant employees are entitled to three types of accommodations without having to provide documentation from a licensed health care provider or certified doula or otherwise prove the accommodation is necessary. An employer may not deny any of these accommodations:

1. more frequent restroom breaks or food and water breaks;
2. seating arrangements; and
3. a limit on lifting more than 20 pounds.

Employees may, with the advice of a licensed health care provider or certified doula, request the employer provide other reasonable accommodations, such as transfer to a less strenuous position. The employer and employee must engage in an interactive process with respect to an employee's request. An employer may deny requested pregnancy accommodations, aside from those listed in (1) through (3) above, if it can show it would cause the employer an undue hardship. The employer cannot require an employee to take leave or accept pregnancy accommodations the employee does not want.

From Sept. 1, 2020, through Aug. 31, 2021, DLI received two complaints related to the Pregnancy Accommodations law.

2020 DLI case example: An employer removed a pregnant employee from the work schedule after she submitted a doctor's note that included lifting restrictions. DLI contacted the employer and explained the part of the Pregnancy Accommodations law that prohibits employers from requiring an employee to accept an accommodation or take a leave. The employer then transferred the employee to a less strenuous position and the employee accepted this accommodation.

III. Pregnancy and Parenting Leave (M.S. § 181.941)

The Pregnancy and Parenting Leave law requires that an employer provide at least 12 weeks of unpaid pregnancy and parenting leave within 12 months of the birth or adoption of a child.

Employers are required to comply with this law if they employ 21 or more employees at one site. Employees are protected by this law if they have worked for the employer for at least 12 months and have worked at least half-time during the previous 12 months.

From Sept. 1, 2020, through Aug. 31, 2021, DLI received one complaint related to the Pregnancy and Parenting Leave law.

2020 DLI case example: An employee of a manufacturer reported he was terminated after taking parental leave, alleging a violation of the parental leave law (M.S. § 181.941) and the law providing the right to be reinstated to the same or a comparable position at the same rate of pay after such leave (M.S. § 181.942). DLI reached out to the employer and the employer's attorney responded indicating the employee would be reinstated with back pay.

IV. Nursing Mothers (M.S. § 181.939)

The Nursing Mothers law requires employers of any size to provide both a reasonable amount of time and a suitable space for an employee to express breast milk.

Currently, an employer must provide reasonable, unpaid break time each day to any employee who needs to express milk for their child. However, the employer is not required to provide the break time if doing so would unduly disrupt the employer's operations.

An employer must make a reasonable effort to provide a space to express milk that:

1. is in close proximity to the work area;
2. is a room other than a bathroom or toilet stall;
3. is shielded from view;
4. is free from intrusion from coworkers and the public; and
5. includes access to an electrical outlet.

DLI must conduct an expedited investigation of nursing mother complaints. DLI is required to contact the employer within two business days and investigate the complaint within 10 days. Therefore, DLI:

- contacts the employer within two business days of receiving the complaint;
- schedules an on-site visit or requires information be submitted within five days; and
- gains compliance or issues an Order to Comply within 10 days.

Further, an employer may not retaliate against an employee for asserting rights or remedies under the Nursing Mothers law.

Effective Jan. 1, 2022, employers cannot reduce an employee's compensation for time taken to express milk. However, this change in the law will not require employers to start paying for current unpaid break time used to express milk, such as a meal break.

From Sept. 1, 2020, through Aug. 31, 2021, DLI received three complaints related to the Nursing Mothers law. The employers in these cases were contacted within two business days and the complaints were investigated within 10 days of receiving the complaint, as is required under M.S. § 181.9435.

2021 DLI case example: A nursing employee contacted DLI to make a complaint regarding access to appropriate nursing mothers’ facilities. She worked for a large employer that had up to 100 nursing mothers at a time. The employee claimed that the workplace included several unoccupied office spaces that would meet the requirements of the nursing mothers’ law; however, she was denied access to those spaces and limited to using a restroom for nearly four months. DLI investigated and found that the employer was requiring employees to use a bathroom to express milk, in violation of M.S. § 181.939. After discussions with the employer, DLI was able to get the employer to comply and provide DLI with proof of the new space for nursing mothers that complied with the requirements of the law.

V. Sick Leave Benefits; Care of Relatives (M.S. § 181.9413)

The Sick Leave Benefits; Care of Relatives law (also known as sick and safe leave) requires that if an employer provides paid sick leave benefits to its employees, it must allow employees to use the paid sick leave benefits to care for a sick family member. The law also allows employees to use paid sick leave to receive assistance or provide assistance to a family member related to sexual assault, domestic abuse or stalking. An employer may limit the use of sick and safe leave benefits for family members to no more than 160 hours in any 12-month period. However, the employer cannot limit the use of sick and safe leave benefits for absences due to an illness of or injury to the employee’s minor child.

“Family member” under this law means a child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or step-parent. “Child” includes a biological child, step-child, foster child or adopted child.

From Sept. 1, 2020, through Aug. 31, 2021, DLI did not receive any complaints alleging violations of the sick and safe leave law.

2018 DLI case example: DLI received a complaint alleging an employer had retaliated against an employee for using accrued sick leave. The complainant alleged they were terminated after taking seven days off to care for their sick spouse. The complainant alleged the employer had more than 21 employees (a requirement for coverage under this law). After receiving the records from the employer, DLI found the employer only had 17 employees and, therefore, the employee was not covered under Minnesota’s sick and safe leave law. The case was subsequently closed.

DLI outreach

The Labor Standards unit at DLI responds to more than 20,000 inquiries annually from workers, employers and others about various wage-and-hour concerns, including WESA protections.

Labor Standards has provided written information about WESA to employers and employees. DLI has developed an FAQs document summarizing basic requirements of the Pregnancy and Parenting Leave, Pregnancy Accommodations and Nursing Mothers laws: who is a covered employer and employee; what covered employers must do; and what covered employees are entitled to. The FAQs document also provides Labor Standards' contact information for further questions about WESA or other Labor Standards laws.

DLI has several informative fact sheets related specifically to WESA provisions on its website, which include responses to questions DLI commonly fields. In addition, DLI has updated its website and online content to make it more user-friendly, enabling visitors to find information about their rights and responsibilities more easily. Labor Standards continues to publish a monthly email bulletin to help inform employers about the state's minimum wage, overtime, tips, wage deductions, child labor and WESA requirements.

DLI continues to participate in outreach events to engage employers, associations, community-based organizations and worker advocates about WESA and how to contact DLI for information and assistance. From Sept. 1, 2020, through Aug. 31, 2021, DLI participated in 77 outreach events where it provided WESA information or training.

Finally, in addition to its ongoing efforts to raise awareness about WESA, DLI has implemented a WESA Outreach Plan to focus resources and raise awareness about the nursing mother and pregnancy accommodation protections. This plan includes the following activities.

- Twenty-three events that included outreach about WESA (780 total participants at those events). Three of these events were specialized WESA webinars including DLI, the U.S. Department of Labor's Wage and Hour Division and the Minnesota Department of Health that brought together health professionals, county health offices and related nonprofit organizations.
- Published and began distribution of multilingual (English, Hmong, Somali, Spanish) brochures for pregnant and new parents about their rights under WESA. Approximately 500 were distributed between July 1 and Aug. 21, 2021.
- Published the pregnant workers and new parents webpage May 3, 2021. From May 3 to Aug. 21, 2021, 4,449 people visited the webpage. The webpage brings together information about rights and responsibilities under WESA, updates about the 2021 legislative changes, fact sheets and other information, and is at www.dli.mn.gov/newparents.
- Created a new three-minute informational video about rights and responsibilities under WESA. The video has versions in English, Hmong, Somali and Spanish.

- Partnered with the Minnesota Breastfeeding Coalition and the African American Babies Coalition on WESA outreach projects during spring 2021, helping DLI to reach underrepresented and diverse communities across the state.
- Distributed sample newsletter language about the legislative changes to more than 150 employer associations, 16 of which let DLI know they would inform their members.
- From Sept. 11, 2020, to Aug. 21, 2021, DLI published 12 posts on DLI’s social media accounts (Facebook, LinkedIn and Twitter) about workplace rights and protections for expectant and new parents. These posts reached thousands of followers on the respective social media platforms.
- On July 28, 2021, DLI sent a Wage and Hour Bulletin to 7,494 people, with information about workplace provisions to support breastfeeding families.
- Ran Google ads related to workplace rights and protections for expectant and new parents from May 28 to June 30, 2021. About 500 people clicked on the Google search ad and about 5,700 people clicked on the Google display ad. These ads restarted in August 2021 and will run until June 2022.
- Next year’s plans: Ongoing social media and online messaging each month, outreach grants and brochure distribution.

Information and frequently asked questions about WESA can be found on DLI’s website at www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs and at www.dli.mn.gov/newparents.

DLI has developed a series of workplace fact sheets for employers and employees that are available online.

- Wage disclosure – www.dli.mn.gov/sites/default/files/pdf/wage_disclosure.pdf
- Pregnancy leave, pregnancy accommodations and nursing mothers – www.dli.mn.gov/sites/default/files/pdf/pregnancy_nursing.pdf
- Parenting leave – www.dli.mn.gov/sites/default/files/pdf/parental_leave.pdf
- Sick and safe leave – www.dli.mn.gov/sites/default/files/pdf/sick_leave.pdf

DLI referrals

Minnesota Department of Employment and Economic Development

DLI refers questions related to workforce development to the Minnesota Department of Employment and Economic Development (DEED). Specifically, DEED administers a WESA grant program to assist women in obtaining employment in high-wage and high-demand occupations.

DLI also refers questions related to unemployment insurance benefits to DEED. Under WESA, employees may be eligible for unemployment benefits if they quit their job because of abuse, sexual assault or stalking.

Minnesota Department of Human Rights

DLI refers questions related to equal pay certificates to the Minnesota Department of Human Rights (MDHR). Businesses contracting with Minnesota state agencies must have an Equal Pay Certificate issued by MDHR if the contract exceeds \$500,000 and the business has 40 or more full-time employees.

DLI also refers questions related to the Familial Status Protected Class law to MDHR. Under WESA, “familial status” was added to the list of protected classes against whom labor organizations, employers and employment agencies cannot discriminate. Familial status is defined in the Minnesota Human Rights Act to include: (1) a parent, guardian or designee of a parent or guardian who lives with at least one minor; or (2) a person who is pregnant or is in the process of securing legal custody of a minor.⁴

In addition to taking pregnancy accommodation complaints, DLI refers possible cases of pregnancy discrimination directly to MDHR. DLI also refers cases where it determines it cannot enforce WESA because an employee is not eligible for the workplace protection based on employer size.

Minnesota Department of Health

DLI has also been referring to the Minnesota Department of Health’s Breastfeeding Friendly Workplaces Program. These referrals are taking place primarily through outreach events and through a link on the WESA page to <https://health.mn.gov/people/breastfeeding/recognition>.

Conclusion

From July 2014 through August 2021, DLI completed 98 investigations of alleged violations of the five WESA provisions within its legal authority. Through continued planning for outreach and engagement about WESA to employers and workers, DLI is committed to raising awareness and helping employers remain in compliance with these workplace protections.

⁴M.S. § 363A.03, subd. 18 (www.revisor.mn.gov/statutes/?id=363A.03).

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