

Paid Leave Rulemaking Listening Session – Topic Guide

Minnesota's [Paid Leave law](#) and [statute](#) to implement the Family and Medical Benefit Insurance Program (“Paid Leave”) will help covered individuals take time off when they need to care for themselves or their loved ones. The Minnesota Legislature passed Paid Leave into law in 2023 and charged the Minnesota Department of Employment and Economic Development (DEED) with administering the Paid Leave program. Additionally, DEED has authority under this law to adopt rules necessary to carry out the Paid Leave program. Rulemaking in Minnesota follows procedures outlined in the Minnesota Administrative Procedure Act in Minn. Stat. Chap. 14.

During this listening session, we welcome your written or verbal comments on the topics within this discussion guide.

We also welcome your comments through the Office of Administrative Hearings website: [Office of Administrative Hearings Comments On Rules \(granicusideas.com\)](#). Comments received are public and will be available for review at the OAH Rulemaking eComments website.

Intermittent Leave

[Minnesota Statutes, section 268B.085, subdivision 3](#), allows covered individuals to take intermittent paid leave, which means leave taken in separate blocks of time due to a single, seven-day qualifying event. For intermittent leave, the weekly benefit amount and the time available for leave is adjusted accordingly for the schedule.

Draft rule to establish the process to calculate benefits for intermittent leave

Below is the draft rule establishing the process to calculate benefits for intermittent leave:

- A. A total weekly benefit payment will be calculated using the process set out in Minnesota Statutes, section 268B.04 Subdivision 3.
- B. The benefit payment will be calculated by taking the number of hours used during the absence multiplied by the hourly replacement rate.
- C. The hourly wage replacement rate will be determined by dividing the total weekly benefit by the number of hours worked in an applicant’s typical work week to determine an hourly wage replacement rate.

For discussion:

- What should DEED consider regarding its process to calculate benefits for intermittent leave?
- What additional feedback, questions, or concerns do you have on this topic?

Draft rule to establish the process to calculate available intermittent leave

Below is the draft rule to determine how the amount of the available intermittent leave will be calculated:

- A. The number of hours in a typical work week will constitute one week for the purposes of Minnesota Statutes, section 268B.04 Subdivision 5. An applicant's initial leave balance must be calculated by taking the number of hours in one week multiplied by the maximum leave benefits in Minnesota Statutes, section 268B.04 Subdivision 5.
- B. The number of hours of leave taken must be deducted from the leave balance.

For discussion:

- What should DEED consider regarding its process to prorate available intermittent leave?
- What additional feedback, questions, or concerns do you have on this topic?

Draft rule to define terms related to intermittent leave schedules

Under Minnesota Statutes, section [268B.085, subdivision 3](#), covered individuals are required to make a reasonable effort to schedule an intermittent leave so as not to unduly disrupt the operation of an employer.

Below is the draft rule to define terms related to intermittent leave schedules:

- A. A reasonable effort means: at a minimum, the covered individual must share the need for leave and proposed schedule with the employer in advance of applying for benefits with the division.
- B. Unduly disrupt the operation of the employer means: causing otherwise avoidable closure or reduced operating hours.

For discussion:

- What should DEED consider regarding the definition of "reasonable effort?"
- What should DEED consider regarding the definition of "unduly disrupting the operation of an employer?"
- What additional feedback, questions, or concerns do you have on this topic?

Potential rule to address disagreements between employees and employers on intermittent leave schedules

For discussion:

- What should DEED consider when establishing methods to address disagreements between employers and employees about intermittent leave schedules?
- What additional feedback, questions, or concerns do you have on this topic?

Draft rule to require schedule adherence

Below is the draft rule to require schedule adherence:

Covered individuals are required to adhere to the schedule as approved by the department.

- A. A covered individual will not be eligible for benefits for days not included in their approved leave schedule.
- B. Days taken outside of an approved schedule will be applied to the covered individual's leave allotment for the year.
- C. A covered individual may, subject to Minnesota Statutes, section 268B.04 Subdivision 8, request reimbursement for absences taken outside of an approved schedule if the individual applies for and is granted a leave schedule modification.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Role of the Employer

Draft rule to validate employer notice requirements

Under Minnesota Statutes, section 268B.085, employees are required to provide their employers at least 30 days' advance notice before a leave is taken.

Below is the draft rule to validate employer notice requirements:

The department will validate notice requirements under Minnesota Statutes, section 268B.085 by:

- A. Requiring an attestation from the covered individual that the employer has been notified of the request for leave at least 30 calendar days, or as soon as practicable, prior to submitting an application to the department. This attestation may include the date and manner in which notice was provided.
- B. Requiring DEED share the attestation with the employer from whom the covered individual would be taking leave.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Potential rule to establish result of failure to notify employer

If a covered individual fails to notify their employer pursuant to the requirements of section 268B.085, DEED may draft a rule specifying that the start date of the covered individual's leave may be delayed.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Potential rule to identify information that will be shared with an employer during application

DEED may draft a rule that requires the Department to notify an employer when any of the of the following events take place:

- a. An application for benefits is initiated by an individual.
- b. An application for benefits is submitted by an individual.
- c. An application for benefits is approved by the division along with information related to benefit amount and payment schedule.
- d. An application for benefits is denied by the division.
- e. A modification to a proposed leave schedule is made by an individual.

DEED may draft a rule that requires the following information provided by the individual as part of an application for benefits to be shared with an employer at the time of submission, including:

- a. The requested dates of a leave.
- b. Other qualifying leaves reported by the applicant.
- c. Other payments an individual will receive during a leave.
- d. Leave schedules for intermittent leave.
- e. Typical workweek as reported by the applicant.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Potential rule to identify information that may be requested from an employer during application

As part of an application for benefits, DEED may request from the employer verification of information provided by the applicant.

DEED may ask the employer about:

- The employee's previous use of paid or unpaid leave
- Other payments received by the employee during the course of a leave
- The typical workweek of the employee.

The employer must have up to seven calendar days to respond to a request for information from the department. If no response has been received at that time, the application will be adjudicated based on the information available.

Information from an employer that is received after a determination of eligibility may be used to adjust the amount of leave and benefits determined as appropriate.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Potential rule on designation of supplementary benefits

An employer may choose whether to designate payments to a covered individual as supplemental benefits through the employer’s internal policies and procedures. DEED may adopt a rule to require employers to report whether a covered individual is receiving supplemental benefits.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Draft rule regarding reporting fraud

Below is the draft rule regarding notifications for fraud:

An employer’s sincere report to the department that a covered individual has committed fraud in connection with the covered individual’s application or use of benefits, must not be considered an action of retaliation or interference under Minnesota Statutes, section 268B.09.

For discussion:

- What feedback, questions, or concerns do you have on this topic?

Covered Employment

Below is the definition of covered employment from Minnesota Statutes, section 268B:

Covered employment.

(a) "Covered employment" means performing services of whatever nature, unlimited by the relationship of master and servant as known to the common law, or any other legal relationship performed for wages or under any contract calling for the performance of services, written or oral, express or implied.

(b) For the purposes of this chapter, covered employment means an individual's entire employment during a calendar year if:

- (1) 50 percent or more of the employment during the calendar year is performed in Minnesota; or
- (2) 50 percent or more of the employment during the calendar year is not performed in Minnesota or any other single state within the United States, or United States territory or foreign nation, but some of the employment is performed in Minnesota and the individual's residence is in Minnesota during 50 percent or more of the calendar year.

(c) "Covered employment" does not include:

- (1) a self-employed individual;
- (2) an independent contractor; or
- (3) employment by a seasonal individual, as defined in subdivision 35.

(d) Entities that are excluded under this section may opt in to coverage following a procedure determined by the commissioner. In such cases, services provided by individuals are considered covered employment under subdivision 15.

(e) The commissioner may adopt rules in accordance with chapter 14 to:

- (1) further define the application of this subdivision; and
- (2) establish the criteria for covered employment for individuals that do not meet the criteria in paragraphs (a) and (b), but that perform services as an employee to a Minnesota employer.

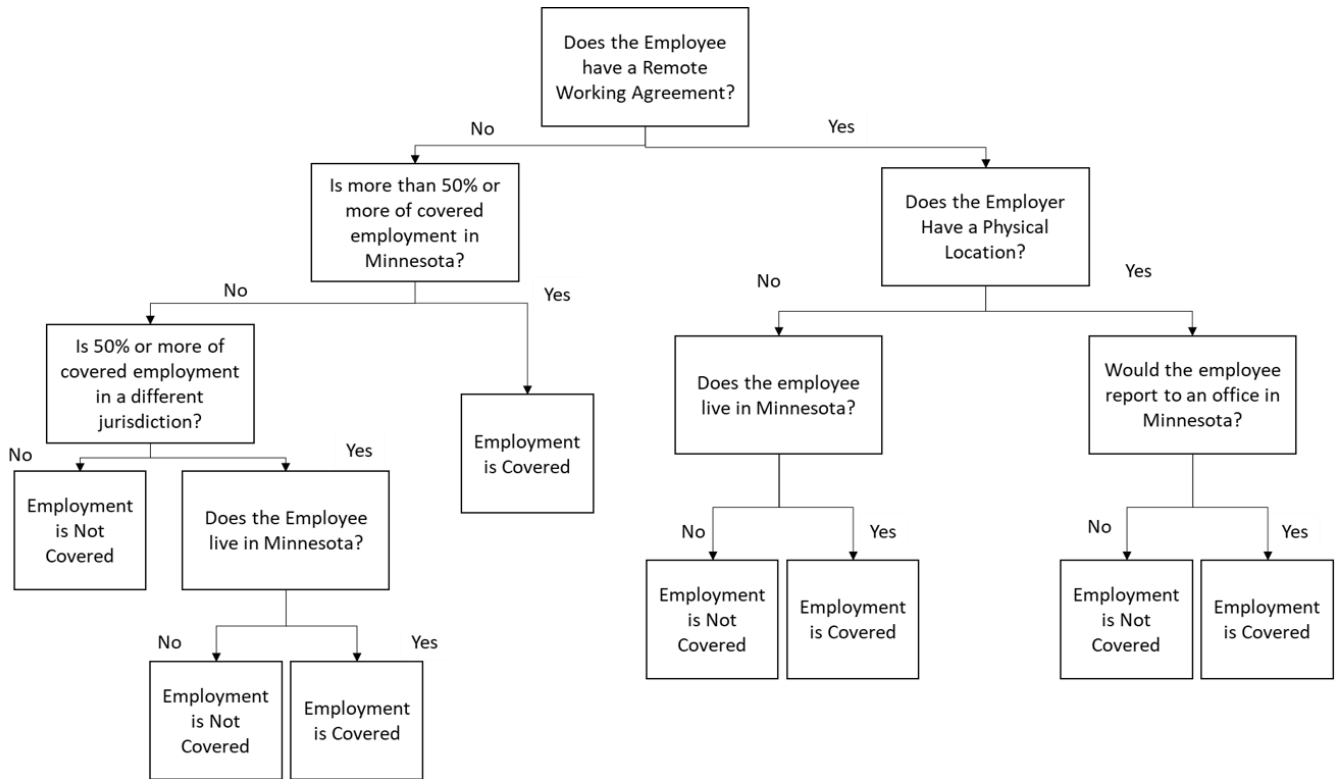
Draft rule regarding remote working agreements

Below is the draft rule regarding the definition of covered employment for remote workers:

A remote working agreement is a written agreement between an employer and individual that allows a covered individual to work from home or another location instead of reporting to a physical office for all or part of their employment. Employment performed under a remote working agreement will be considered covered employment if:

- A. The physical location where the covered individual reports to work for non-remote working days is in Minnesota for 50 percent or more of the calendar year; or
- B. There is no physical office to which the covered individual reports as part of their employment and 50 percent or more of the employment during the calendar year is completed in Minnesota for an employer outside of the state.

Additional context: how the covered employment localization test would work with the draft rule on remote working agreements incorporated



For discussion:

- What feedback, questions, or concerns do you have on this topic?

Draft rule on multi-state employers

If an employer operates in multiple U.S. states with state-run Paid Family and Medical Leave programs and an individual is jointly eligible for benefits in Minnesota and another state, benefits paid by Minnesota will be offset by any benefits received from the other state.

For discussion:

- What feedback, questions, or concerns do you have on this topic?