

Paid Leave Rulemaking Listening Session – All Topics 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 Paid Leave’s “Any Topic” rulemaking listening sessions, we welcome your written or verbal comments on the topics within this guide, or any additional topics relevant to Paid Leave. This guide reflects all of the topics, draft rules, and potential rules that have been posed by the department for comment in prior sessions in this 2024 rulemaking listening session series.

We also welcome your comments through the Office of Administrative Hearings website through July 10, 2024: [Office of Administrative Hearings Comments On Rules \(granicusideas.com\)](https://www.granicusideas.com). Comments received are public and will be available for review at the OAH Rulemaking eComments website.

Contents

- Health Care Providers5
 - Draft rule to expand the health care provider definition.....5
 - Draft rule to provide guidance for certifications by health care providers outside Minnesota6
- Serious Health Conditions and Other Qualifying Events6
- Safety Leave.....6
 - Draft rule to further define the certification process for safety leave.....7
 - Potential rule on additional certifying parties.....7
 - Potential rule on documentation to verify credentials of a qualified person and/or their organization7
 - Draft rule establishing necessary elements for certification of safety leave8
- Claims Administration8
 - Draft rule on certification of caring leave8
 - Draft rule requiring caring leave applicants to attest to relationship with family member9
 - Draft rule on multiple applicants seeking caring leave for the same family member9
- Intermittent Leave.....9
 - Draft rule to establish the process to calculate benefits for intermittent leave..... 10
 - Draft rule to establish the process to calculate available intermittent leave 10
 - Draft rule to define terms related to intermittent leave schedules..... 10
 - Potential rule to address disagreements between employees and employers on intermittent leave schedules 11
 - Draft rule to require schedule adherence 11
- Modifications..... 11
 - Potential rule on updating information previously provided on application..... 11
 - Draft rule on reporting additional income 12
 - Draft rule on changing dates 12
- Employment Protections..... 13

- Potential rule to clarify employment protections 13
- Benefit Payments 14
 - Draft rule on payment schedules 14
 - Draft rule on backdating an application 14
 - Draft rules on payment of benefits following the death of a covered individual or family member 15
- Overpayments 15
 - Potential rule on collecting overpayments 15
- Seasonal Employment 15
 - Potential rule to clarify the receipt threshold, formula, and process 16
 - Potential rule to clarify working “in hospitality” 16
 - Potential rule to clarify 150-day maximum employment 16
- Opting in 16
 - Potential rule to provide guidance for the opt-in process 16
- Role of the Employer 17
 - Draft rule to validate employer notice requirements 17
 - Potential rule to establish result of failure to notify employer 17
 - Potential rule to identify information that will be shared with an employer during application 17
 - Potential rule to identify information that may be requested from an employer during application 18
 - Potential rule on designation of supplementary benefits 19
 - Draft rule regarding reporting fraud 19
- Covered Employment 19
 - Draft rule regarding remote working agreements 20
 - Draft rule on multi-state employers 21
- Private Plans 21
 - Potential rule on private plan applications 21
 - Draft rule on private plan reporting requirements 21

Small Employer Assistance Grants 22

 Potential rule on application process and award criteria 22

 Draft rules to define “temporary worker” and “wage-related costs” 22

Health Care Providers

[Minnesota Statutes, section 268B.01, subdivision 24](#) defines the term “health care provider.”

Draft rule to expand the health care provider definition

Applicants seeking paid time off under the Paid Leave program for their own serious health condition, pregnancy, or birth of a child, or to care for a family member with a serious health condition, must provide DEED with a certification of the health condition signed by a health care provider, as required by Minnesota Statutes, section 268B.06. Applicants seeking paid time off to bond with a child following the child’s placement for adoption or foster care may also need to provide a certification from a health care provider.

A "health care provider" who can provide the certification is defined in Minnesota Statutes, section 268B.01, subdivision 24, as:

- (1) an individual who is licensed, certified, or otherwise authorized under law to practice in the individual's scope of practice as a physician; physician assistant; podiatrist; osteopath; surgeon; advanced practice registered nurse; an alcohol and drug counselor as defined in section 148F.01, subdivision 5; or a mental health professional as defined in section 245I.02, subdivision 27; or
- (2) any other individual determined by the commissioner by rule, in accordance with the rulemaking procedures in the Administrative Procedure Act, to be capable of providing health care services.

Below is a draft rule to expand “health care provider” as:

- A. A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which they practice;
- B. A dentist, optometrist, or chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the state and performing within the scope of their practice; and
- C. A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts. Where an employee or family member is receiving treatment from a Christian Science practitioner, an employee may not object to any requirement from an employer that the employee or family member submit to examination (though not treatment) to obtain a second or third certification from a health care provider other than a Christian Science practitioner except as otherwise provided under applicable State or local law or collective bargaining agreement.

For discussion:

- Is there value in aligning Minnesota’s definition of health care providers with the FMLA definition?
- What additional providers should DEED consider for inclusion in the definition?
- What feedback or concerns are there on this topic?

Draft rule to provide guidance for certifications by health care providers outside Minnesota

When a health care provider operating outside of Minnesota is providing certification of a health condition for an applicant to the Paid Leave program, the Paid Leave program may need additional information to verify the health care provider's identity and credentials, or ensure the identity and credential information provided in the certification is sufficient to approve or deny the application.

Below are draft rules to provide guidance for certifications by providers operating outside of Minnesota:

1. Health care providers operating outside of Minnesota: Providers operating outside of the state of Minnesota may complete a certification on behalf of an applicant applying for Paid Leave. The department may require additional information from the applicant or health care provider to verify licensure of the health care provider completing the certification.

For discussion:

- What should DEED consider regarding requirements for certifications from health care providers outside of Minnesota?
- What feedback or concerns are there on this topic?

Serious Health Conditions and Other Qualifying Events

Minnesota Statutes, section 268B.06, subdivision 2, says that to qualify for Paid Leave, individuals must experience an event that lasts at least seven calendar days.

For discussion:

- What should DEED consider if DEED defines a list of prospectively presumed seven-day qualifying events?
- What concerns would you have about a rule setting out a list like this?
- Are there comparable lists in existence that DEED should explore?
- What feedback or concerns are there on this topic?

Safety Leave

Minnesota [Statutes, section 268B.01](#), subdivision 34 defines the term "safety leave" as "leave from work because of domestic abuse, sexual assault, or stalking of the applicant or applicant's family member" to seek medical attention, victim services, psychological or other counseling, relocation, legal advice or to take legal action. Applicants seeking safety leave must obtain certification pursuant to Minnesota Statutes, section 268B.06, subdivision 3(g). DEED is considering adopting rules to further define the certification process for safety leave.

Draft rule to further define the certification process for safety leave

Below are draft rules further defining the certification process for safety leave:

A qualified person who is eligible to sign documentation certifying safety leave includes:

- A. An individual who is licensed, certified, or otherwise authorized under law to practice as a mental health professional or a mental health practitioner as defined in Minnesota Statutes, section 2451.04 and operating within the scope of their practice;
- B. A licensed health care professional operating within the scope of their license;
- C. A domestic abuse advocate or sexual assault counselor as defined by Minnesota Statutes, section 595.02, acting in their official capacity;
- D. A victim's advocate who is employed by, under contract with, or appointed by the court, acting in their official capacity;
- E. A judge, referee, court administrator, prosecutor, or probation officer, acting in their official capacity.
- F. A Title IX Coordinator, as defined by 34 C.F.R. § 106.8, acting in their official capacity.
- G. A peace officer, part-time peace officer, or reserve officer as defined by Minnesota Statutes, section 626.84, acting in their official capacity.

For discussion:

- What should DEED consider when making rules regarding qualified persons eligible to sign documentation?
- What feedback or concerns are there on this topic?

Potential rule on additional certifying parties

The department may consider additional certifying parties beyond those listed in statute and rules. The department may request additional documentation and reasoning for those certifying parties, from the individual seeking leave and/or the desired certifying party.

The department may offer a registration process for verifying identity and credentials of certifying parties.

For discussion:

- What should DEED consider regarding the qualifications of certifying parties or their organizations?
- What should DEED consider if developing a registration process?
- What feedback or concerns are there on this topic?

Potential rule on documentation to verify credentials of a qualified person and/or their organization

DEED may request documentation to verify the credentials of the qualified person providing a certification for an applicant seeking safety leave.

For discussion:

- What should DEED consider regarding the qualifications of certifying parties or their organizations?
- What feedback or concerns are there on this topic?

Draft rule establishing necessary elements for certification of safety leave

Below are draft rules establishing necessary elements for the certification of safety leave:

To provide certification for safety leave, a qualified person must attest that:

- A. The applicant requires leave from work because of domestic abuse, sexual assault, or stalking of the applicant or the applicant's family member; and
- B. The leave is necessary to:
 - a. Seek medical attention for a physical or psychological injury caused by domestic abuse, sexual assault, or stalking;
 - b. Obtain services from a victim services organization;
 - c. Obtain psychological or other counseling;
 - d. Seek relocation due to the domestic abuse, sexual assault, or stalking; or
 - e. Seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to, or resulting from the domestic abuse, sexual assault, or stalking.

For discussion:

- What should DEED consider regarding the certification of safety leave?
- What feedback or concerns are there on this topic?

Claims Administration

Minnesota Statutes, section [268B.06 subdivision 3](#) provides the requirements to certify leave taken to care for a family member. DEED is considering making rules to further define the process to certify applicants' eligibility to take leave to care for family members.

Draft rule on certification of caring leave

Below is a draft rule on the certification of caring leave:

Certification for an applicant taking leave to care for a family member with a serious health condition must include:

- A. The relationship of the applicant to the family member who needs care;
- B. The appropriate medical facts within the knowledge of the health care provider establishing that the family member requires care;
- C. The proposed leave schedule for the applicant to care for the family member; and

- D. An attestation by the health care provider signing the certification that affirms that the health care provider is treating the family member.

For discussion:

- What should DEED consider regarding the certification of caring leave?
- What feedback or concerns are there on this topic?

Draft rule requiring caring leave applicants to attest to relationship with family member

Below is a draft rule regarding the required attestation:

Applicants seeking leave to care for a family member with a serious health condition must attest that the person the applicant is taking leave to care for is the applicant’s “family member” as defined in Minnesota Statutes, section 268B.01, subdivision 23. Providing false information will be considered a misrepresentation under Minnesota Statutes, section 268B.185 or other applicable laws.

For discussion:

- What should DEED consider regarding the attestation statement applicants must make?
- What should DEED consider including in this process to deter fraudulent applications?
- What feedback or concerns are there on this topic?

Draft rule on multiple applicants seeking caring leave for the same family member

Below is a draft rule regarding the certification requirements when multiple applicants seek caring leave to care for the same family member:

If more than one applicant seeks leave to provide care for the same family member with a serious health condition, the certification must be completed by the same health care provider. Covered individuals taking leave to care for the same family member may only take leave at the same time if the family member’s health care provider includes information in the certification documenting that more than one person is necessary to provide the family member’s care.

For discussion:

- What should DEED consider regarding the adoption of rules to administer caring leave taken by multiple applicants for the same family member?
- What feedback or concerns are there on this topic?

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 feedback or concerns are there 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 feedback or concerns are there 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 feedback or concerns are there 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 feedback or concerns are there 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 covered individual will not be eligible for benefits for days not included in their approved leave schedule.
- Days taken outside of an approved schedule will be applied to the covered individual’s leave allotment for the year.
- 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 or concerns are there on this topic?

Modifications

Sometimes, circumstances change before or during a leave, and the person taking leave needs to adjust their personal details or leave schedule.

Potential rule on updating information previously provided on application

If an applicant requests a change in personal information that was provided to the department as part of an application for benefits, the department may require verification of the newly provided information.

For discussion:

- What personal information changes might DEED consider if DEED makes rules on this topic?
- What feedback or concerns are there on this topic?

Draft rule on reporting additional income

Below is a draft rule on reporting additional income:

If a covered individual receives additional income during a leave that was not reported in the initial application for benefits, the covered individual must notify the department. The covered individual does not need to notify the department of income designated as a supplementary benefit by the covered individual's employer.

For discussion:

- What other guidance on reporting additional income should DEED consider?
- What feedback or concerns are there on this topic?

Draft rule on changing dates

Below is a draft rule on changing the dates of a leave schedule:

- A. **Ending a leave early:** A covered individual must inform the department and employer(s) from whom they are taking leave as soon as practicable that they will return to work before the end of their approved leave. As soon as practicable in this context is at least 7 calendar days.
- B. **Extending an approved leave:** If a covered individual seeks an extension of benefits, the covered individual must request an extension with the department and inform employer(s) from whom they are taking leave.
 - a. An application for extension must be filed 14 calendar days prior to the expiration of the original approved leave. The department will allow extension applications that are filed closer to expiration of the original approved leave if good cause is shown for the late application.
 - b. A request for an extension must include all information required by the department, including:
 - i. The reason for the extension;
 - ii. The requested duration of the extended leave;
 - iii. The date on which the covered individual provided notice for the request for extension to the employer (if applicable); and
 - iv. A newly completed or updated certification from the covered individual's health care provider or a certifying party, except in the case of bonding leave.
- C. **Changing intermittent leave schedules:** If a covered individual seeks to change an intermittent leave schedule, the covered individual must request a change in schedule from the department.
 - a. A request for change in schedule must be filed 14 calendar days prior to the expiration of the original approved leave; the department will allow a late filed request for change in schedule for good cause shown.
 - b. A request for a change in schedule must include all information required by the department, including:
 - i. The reason for the change;
 - ii. The proposed changes to the schedule;
 - iii. The date on which the covered individual provided notice to employer(s) for the request for extension (if applicable); and

- iv. A newly completed or updated health care provider certification document, except in the case of bonding leave.
- D. **Changing from intermittent to continuous leave:** If a covered individual seeks to change from an intermittent leave schedule to a continuous leave schedule, the covered individual must request a change in schedule from the department.
 - a. A request for change in schedule must be filed 14 calendar days prior to the expiration of the originally approved leave; the department will allow a late filed request for change in schedule for good cause shown.
 - b. A request for a change in schedule must include all information required by the department, including:
 - i. The reason for the change;
 - ii. The requested start and end date of the continuous leave;
 - iii. The date on which the covered individual provided notice to employer(s) for the request for extension (if applicable); and
 - iv. A newly completed or updated certification document, except in the case of bonding leave.
- E. **Changing from continuous to intermittent leave:** If a covered individual seeks to change from a continuous leave schedule to an intermittent leave schedule the covered individual must file an application to request a change in schedule.
 - a. An application for change in schedule must be filed 14 calendar days prior to the expiration of the original approved leave; provided, however, that the Commissioner will allow a late filed request for change in schedule for good cause shown.
 - b. A request for a change in schedule must include all information required by the department, including:
 - i. The reason for the change;
 - ii. The new requested schedule;
 - iii. The requested duration of the extended leave;
 - iv. The date on which the covered individual provided notice to employer(s) for the request (if applicable); and
 - v. A newly completed or updated certification document, except in the case of bonding leave.

For discussion:

- What other guidance on changing leave schedule dates should DEED consider?
- What feedback or concerns are there on this topic?

Employment Protections

Potential rule to clarify employment protections

[Minnesota Statutes section 268B.09](#) and its associated amendments in the [Paid Leave law](#), includes employment protections for employees requesting or obtaining benefits or leave.

For discussion:

- What should DEED consider if DEED makes rules to clarify employment protections for applicants and covered individuals exercising their rights under the Paid Leave law?
- What feedback or concerns are there on this topic?

Benefit Payments

Draft rule on payment schedules

Below is the draft rule on payment schedules:

Benefit payments will be made as follows.

- A. **Continuous Leave Payments:** Continuous leave benefits will be paid weekly.
 - i. **Prospective Leave Payments:** For applications submitted and approved prior to the effective date of leave, the department will begin processing the first payment seven calendar days after the effective date of leave.
 - ii. **Retrospective Leave Payments:** For applications submitted or approved after the effective date of leave, the department will begin processing the first payment either seven days after the effective date of leave or the next business day following approval of the application; whichever is later.
- B. **Intermittent Leave Payments:** Intermittent leave can be paid up to once weekly.
 - i. To seek payment for an intermittent leave, an applicant must report the dates and times of absences related to the leave to the department.

For discussion:

- What feedback or concerns are there on this topic?

Draft rule on backdating an application

Below is the draft rule on backdating an application:

If an applicant is unable to submit an application in a timely manner due to incapacitation or good cause, the department may backdate the application to the effective date of leave.

- A. The applicant must provide all necessary information and documentation required by the department to determine that good cause or incapacitation prevented the timely submission of the application. The documentation must show the factors that prevented the applicant from applying for benefits when the qualifying event occurred. This documentation may include information such as medical certification from a health care provider or evidence of a natural disaster.
- B. An applicant who seeks to backdate an application or weekly payment must file for benefits during the first week in which the factors that constitute good cause no longer exist.

For discussion:

- What other guidance on backdating claims should DEED consider?
- What feedback or concerns are there on this topic?

Draft rules on payment of benefits following the death of a covered individual or family member

Below is the draft rule on payment of benefits following the death of a covered individual or family member:

- A. Paid Leave benefits shall cease upon the death of a covered individual. Any earned but unpaid Paid Leave benefits shall be payable to the estate of the covered individual.
- B. Paid Leave benefits shall cease upon the death of the person whom the covered individual is taking leave to care for or with whom they are taking leave to bond.
- C. The effective date of the cessation of compensation under sections (A) or (B) shall be the first full day during which the individual is no longer alive.
- D. Upon request of the department, covered individuals, the covered individual's estate, or its representatives may need to provide the department with the death certificate, showing the date and time of death.

For discussion:

- What should DEED consider on death of a covered individual or family member?
- What feedback or concerns are there on this topic?

Overpayments

Potential rule on collecting overpayments

In some cases, due to changing circumstances or insufficient information, the department may distribute to a covered individual a larger benefit payment than they should receive. If this happens, the department needs a process for collecting the overpayment.

For discussion:

- What other guidance on overpayments should DEED consider?
- What feedback or concerns are there on this topic?

Seasonal Employment

[Minnesota Statutes, section 268B.01, subdivision 35](#) defines the term “seasonal employee.”

Potential rule to clarify the receipt threshold, formula, and process

In order to establish that an employer meets the receipts threshold in Minnesota Statutes, section 268B.01, subdivision 35, an employers will need to submit actual revenues, disaggregated by month, to DEED.

For discussion:

- DEED is considering adopting a rule to define the term, “receipts.” What should DEED consider when drafting the definition of the term “receipts?”
- What should DEED consider regarding collection of documentation regarding receipts from employers?
- What, if any, other aspects of the receipt formula concept require clarification?
- How could this process be simplified for employers?
- What feedback or concerns are there on this topic?

Potential rule to clarify working “in hospitality”

Under Minnesota Statutes, section 268B.01, subdivision 35, an employee is considered to work “in hospitality” if their employer is a business that falls under the definitions in Minnesota Statutes, section [157.15, subdivisions 4 to 9 and 11 to 14](#).

For discussion:

- What should DEED consider if it defines “seasonal employee” to clarify that “seasonal employees” must work for an employer that meets the definition of a hospitality business under Minnesota Statutes, section 157.15, subdivisions 4 to 9 and 11 to 14?
- Is there feedback, questions, or concerns on this topic?

Potential rule to clarify 150-day maximum employment

Under Minnesota Statutes, section 268B.01, subdivision 35, to be designated as a seasonal employee by an employer, an employee must not be employed by that same employer for more than 150 days.

For discussion:

- DEED is considering adopting a rule to clarify that the 150-day maximum number of days means calendar days, not working days, shifts, or any other interpretation of “day.”
- What feedback or concerns are there on this topic?

Opting in

Potential rule to provide guidance for the opt-in process

Under Minnesota Statutes, section 268B.11, self-employed individuals and independent contractors may opt into coverage by establishing an online Paid Leave account through DEED for opt-in and program participation.

Organizations not included in Paid Leave coverage may opt in by establishing an online Paid Leave account through DEED, and following any additional procedures provided by the department for opt-in and program participation.

For discussion:

- What should DEED consider when designing a clear process for self-employed individuals, independent contractors, and organizations not included in Paid Leave to opt-in?
- What feedback or concerns are there 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 or concerns are there 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 or concerns are there 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 or concerns are there 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 or concerns are there 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 or concerns are there 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 or concerns are there on this topic?

Covered Employment

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

(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.

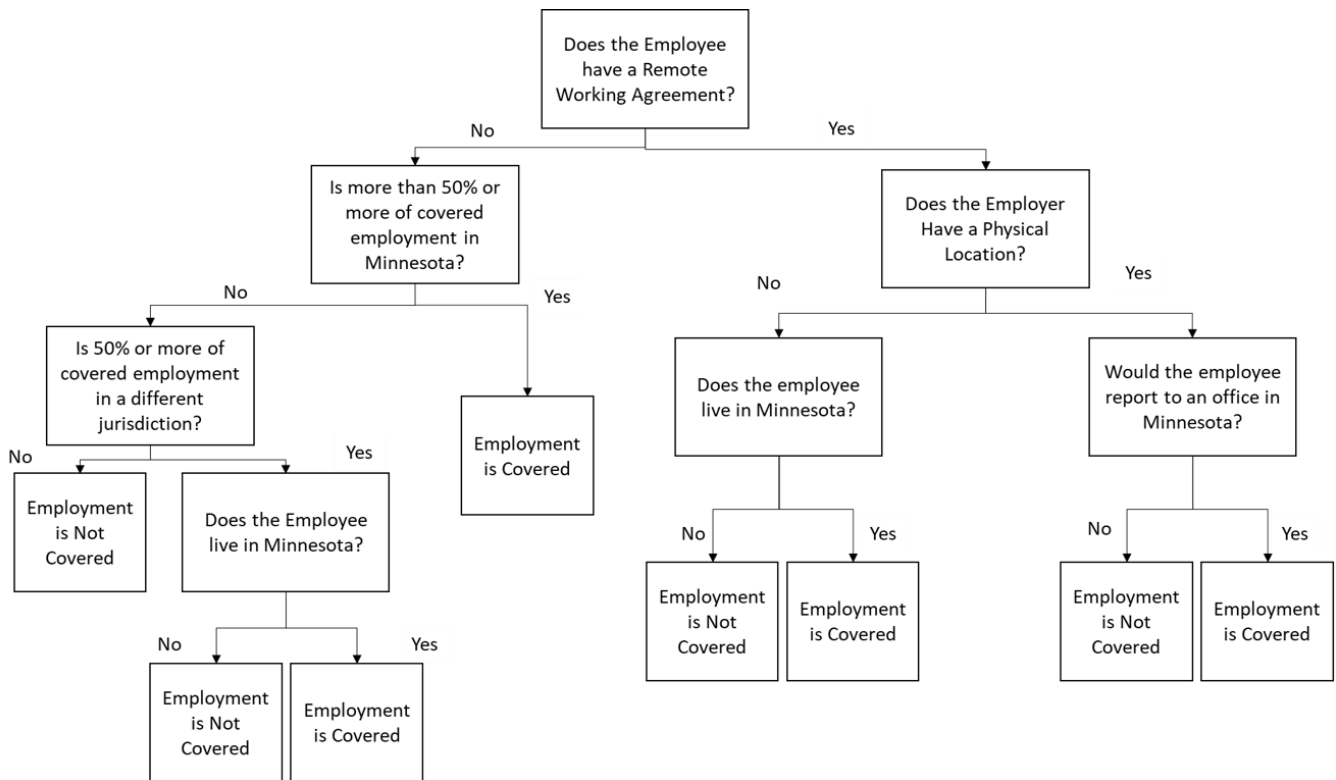
Draft rule regarding remote working agreements

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 or concerns are there 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 or concerns are there on this topic?

Private Plans

Minnesota [Statutes, section 268B.10](#) allows employers to apply to DEED to substitute a private plan that offers paid family, paid medical, or paid family and medical benefits instead of participating in the state Paid Leave program. The private plan must provide employees all the same rights, protections, and benefits that employees receive in the state Paid Leave program.

Potential rule on private plan applications

The Department may adopt rules or procedures to further define the application process DEED will use to assess private plans.

For discussion:

- What feedback or concerns are there on this topic?

Draft rule on private plan reporting requirements

Below is a draft rule on private plan reporting requirements:

Private plan providers shall submit an annual report to the department that includes all required information pursuant to Minnesota Statutes, section [268B.25](#).

For discussion:

- What should DEED consider regarding self-insured private plans?
- Is there anything else DEED should consider regarding private plans?
- What feedback or concerns are there on this topic?

Small Employer Assistance Grants

Minnesota Statutes, section 268B.29 provides for assistance grants to small employers. Employers with 30 or fewer employees and an average wage of less than or equal to 150 percent of the state’s average wage may apply for these grants. The grants must be used to hire temporary workers or increase wages to other current employees.

Individual grants may be approved for up to \$3,000. The maximum total grant amount per eligible employer is \$6,000 in a calendar year. The department may award a maximum of \$5,000,000 in grants per calendar year.

Potential rule on application process and award criteria

DEED may adopt a rule that requires electronic applications for Small Employer Assistance Grants under Minnesota Statutes, section 268B.29.

DEED may adopt a rule regarding award criteria for Small Employer Assistance Grants under Minnesota Statutes, section 268B.29.

For discussion:

- What should DEED consider in creating criteria to award Small Employer Assistance Grants?
- What should DEED consider if it makes rules regarding a process to apply for and receive Small Employer Assistance Grants?
- What feedback or concerns are there on this topic?

Draft rules to define “temporary worker” and “wage-related costs”

Below are draft rules defining terms:

Temporary worker: an individual that an employer hires on a non-permanent basis to substitute for an employee who is on family or medical leave for a period of seven days or more.

Wage-related costs: costs associated with hiring, training, or paying a temporary worker or to train or increase the wages of an existing worker or workers to cover an employee on leave.

For discussion:

- What should DEED consider regarding these draft definitions?
- What feedback or concerns are there on this topic?