

Women's Economic Security Act Annual Report

Minnesota Department of Labor and Industry

September 2015



443 Lafayette Road N.
St. Paul, MN 55155-4307

Information in this report can be obtained in alternative formats by calling the Department of Labor and Industry at (651) 284-5010 or 1-800-342-5354.

Executive summary

The Women's Economic Security Act (WESA) of 2014 was enacted to help narrow the gender pay gap and to make Minnesota's work environments safer for working mothers. The Minnesota Department of Labor and Industry (DLI) provides outreach and education about WESA and enforces five of its provisions.

WESA went into effect on July 1, 2014. From that time through Sept. 1, 2015, DLI has investigated the following:

- **Wage Disclosure Protection** – Three complaints filed, two closed
- **Nursing Mothers** – Five complaints filed, five closed
- **Pregnancy and Parental Leave** – Twelve complaints filed, twelve closed
- **Sick Leave Benefits; Care of Relatives** – Seven complaints filed, five closed
- **Pregnancy Accommodation** – Seven complaints filed, seven closed

Introduction and background

During the 2014 legislative session, the Legislature passed the Minnesota Women’s Economic Security Act (WESA).¹ The Act is a combination of 14 different provisions designed to address gender equity, gender pay gaps, create new training and entrepreneurship opportunities for women, and prohibit discrimination. WESA also includes five new or strengthened workplace protections that are enforced by the Department of Labor and Industry (DLI):

1. Wage Disclosure Protection (M.S. §181.172)
2. Pregnancy Accommodation (M.S. §181.9414)
3. Pregnancy and Parental Leave (M.S. §181.941)
4. Nursing Mothers Accommodations (M.S. §181.939)
5. Sick Leave Benefits; Care of Relatives (M.S. §181.9413)

In addition, the law allows DLI to use M.S. §177.27 to enforce WESA. DLI can issue a Commissioner’s Order requiring an employer to comply with WESA or cease and desist from violating the law. DLI can order an employer to pay back wages to an employee who has suffered a wage loss due to a violation of a WESA workplace protection. DLI can assess a penalty of up to \$1,000 for each violation for willful or repeated activities.

Finally, workers are given a private right of action against employers that violate a WESA workplace protection. Employees can directly sue their employer for violations under M.S. §181.944.

¹ Minnesota Session Laws 2014; Chapter 239 Minnesota Session Laws 2014; Chapter 305, Sec. 29 (www.revisor.mn.gov/laws/?year=2014&type=0&doctype=Chapter&id=305)

DLI enforcement

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

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

Employers that provide employee handbooks are required to include notice of their employees' rights and remedies under this law.

DLI has found employers are primarily interested in how to comply with the law, particularly the notice requirement. DLI has provided the following sample notice language on its website:

Sample notice language: 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 1-800-342-5354.²

As of September 2015, DLI has received three formal complaints related to the disclosure of an employee's own wages. Two of these cases have been closed. Each resulted in the employers coming into compliance with the law by providing the required wage disclosure notice in handbooks and ceasing to tell employees that they could not disclose their own wages.

DLI case example: An employee filed a complaint stating their employer was threatening to terminate employees who discussed their wages. DLI contacted the employer and informed them that these practices violated the Wage Disclosure law. An audit was conducted and revealed that the complainant was earning below the minimum-wage rate. The employer paid back wages and created a Wage Disclosure policy, which is now in the company's employee handbook.

² www.dli.mn.gov/LS/FaqWageDisclosure.asp

II. Pregnancy Accommodation (M.S. §181.9414)

The Pregnancy Accommodation Act requires that employers provide reasonable accommodation to employees with health conditions related to pregnancy or childbirth. Pregnant employees are entitled to receive three types of accommodations without having to provide a note from a doctor or otherwise prove that the accommodation is necessary.

These automatic pregnancy accommodations are:

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

Eligibility for pregnancy accommodation protection is limited to employees who:

- work for employers that employ 21 or more employees at one site,
- have worked for that employer for at least 12 months; and
- have worked at least half-time during the previous 12 months.

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

An employer may deny an accommodation if it can show an undue hardship. An employer cannot require an employee to take leave or accept pregnancy accommodations that the employee does not want.

As of September 2015, DLI has received seven formal complaints related to pregnancy accommodation. All of these cases have been closed. Two of the cases resulted in DLI finding no merit to the complaint, while the other five cases were closed after the employer agreed to come into compliance with the law and update their policies to reflect the changes in law.

DLI case example: A pregnant gas station employee requested a stool while she did her cashier work. Her employer said the stool was a “tripping hazard.” DLI told the employer that it must provide the stool. This same employer reduced the employee’s hours from 10 to eight because of her pregnancy. The employee didn’t ask for or want a reduction in hours as an accommodation, so DLI was able to get her employer to return her to a 10-hour schedule.

DLI case example: An employee filed a complaint that her employer had a policy limiting call center employee restroom time to nine minutes each day, unless an employee provide a letter from a physician stating she needed more time. The employer maintains the same policy across several states in which it does business. The employer had threatened to start deducting wages from the pregnant employee for bathroom time over nine minutes, telling her that excessive use of bathroom could lead to termination. After DLI informed the employer its policy violated WESA, the employer changed its policy and came into compliance. The policy now includes the following language: “No pregnant employee, regardless of location, will be required to submit a physician’s note. Supervisors may ask why an accommodation is needed, but must not ask whether or not an employee is pregnant.”

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

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

Eligibility for pregnancy and parental leave is the same as the pregnancy accommodation eligibility requirements. 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 that employer at least 12 months and have worked for at least half-time during the previous 12 months.

DLI case example: An employee at a packaging company was terminated in the 11th week of her 12 weeks of leave. The employer only employed five individuals. Therefore, there was no coverage under WESA.

As of September 2015, DLI had received 12 formal complaints related to pregnancy and parental leave. All of these cases have been closed. In two cases DLI found there was no violation because the employee was not eligible for the leave, either because she had not worked for the company long enough (12 months), or she had not worked enough hours to qualify for the leave. The other 10 cases were closed after the employer was informed of the law and came into compliance. Three of these files were also referred to the Minnesota Department of Human Rights for pregnancy discrimination.

DLI case example: An employee at a hotel made a pregnancy leave complaint about not being allowed to return to work after taking six weeks leave after the birth of her child. The employee started working for the employer in September 2013 and took leave starting July 2014. Therefore, there was no coverage under WESA. The complainant was referred to the Minnesota Department of Human Rights.

IV. Nursing Mothers (M.S. §181.939)

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

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

An employer of any size 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 mothers' accommodation complaints. DLI is required to contact the employer within two business days and investigate the complaint within 10 days. Therefore, DLI:

- contacts the employer the same day it receives 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.

As of September 2015, DLI had received five formal complaints related to the nursing mothers' law. All of these cases have been closed. All five of the complaints were investigated within 10 days of receipt and all employers were either found to be in compliance with the statute or were brought into compliance within that timeframe.

DLI case example: An employee at a family restaurant filed a complaint because she did not have a private place to express milk. The employee brought the issue to the attention of her manager and was told that she could not use the employee break room to pump. Instead, she was told to go to her car to pump. This resulted in her using the bathroom stall to express milk. DLI contacted the employer immediately, and one day after the complaint was made, DLI received a revised nursing mother's policy from the employer. The employer had come into compliance by allowing the nursing mother to use a locked meeting room with access to an electrical outlet. The case was closed within four days.

DLI case example: An employee who wiped grease off of boxes on an assembly line had been using her 15 minute breaks to express milk. She told the human resources department that she was using her break times to pump. One day, she took 30 minutes to pump and two days later she was terminated. DLI contacted the employer; they apologized to the employee, reinstated her and paid her back wages for her lost time.

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

Minnesota's sick and safe leave law requires that if an employer provides paid sick leave benefits for an employee's own use, it must also allow the employee to use the paid sick leave benefits to care for a sick family member. In addition, a new provision of the law, 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, employer cannot limit the use of sick and safe leave benefits for absences due to an illness of or injury to an employee's minor child.

These cases have primarily been handled by informing employers of the law and gaining their voluntary compliance.

As of September 2015, DLI had received seven formal complaints related to sick and safe leave. Five of these cases have been closed and two are still pending. Of the five closes cases, one employer was determined not to have violated the law, and the other four employers came into compliance after being informed of the new law.

DLI case example: A manufacturing company suspended a single mother who called in sick to care for her three children who had strep throat. The employee was told she was taking too much time off work. DLI contacted the employer to inform them about the new sick and safe leave law. The employer came into compliance and updated their policies to allow employees to use their paid time off benefits to care for sick family members.

DLI outreach

DLI has provided outreach to numerous community-based organizations and has created outreach and educational materials to inform employers and employees about the WESA protections.

DLI has conducted more than 10 training sessions with employer groups including public employers, healthcare employers and construction employers. DLI has also provided training for attorneys and other employer representatives.

Information and answers to frequently asked questions about WESA are online at www.dli.mn.gov/LS/FaqWesa.asp.

While there is no general notice requirement under WESA, DLI has developed a series of workplace posters that can be downloaded and printed by employers.

- Wage Disclosure: www.dli.mn.gov/LS/pdf/wage_disclosure.pdf
- Pregnancy Leave, Pregnancy Accommodations and Nursing Mothers:
www.dli.mn.gov/LS/Pdf/pregnancy_nursing.pdf
- Parental Leave: www.dli.mn.gov/LS/Pdf/parental_leave.pdf
- Sick and Safe Leave: www.dli.mn.gov/LS/Pdf/sick_leave.pdf

DLI referrals

DLI refers cases and questions that cannot be addressed at DLI to other state agencies.

Referrals to the Minnesota Department of Employment and Economic Development (DEED)

DLI refers questions related to workforce development to DEED. Specifically, DEED administers a WESA grant program to assist women in obtaining employment in high-wage, high-demand, nontraditional occupations.

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

Referrals to the Minnesota Department of Human Rights (MDHR)

DLI refers questions related to equal pay certificates to MDHR. Businesses contracting with state agencies must have an Equal Pay Certificate issued by MDHR.

DLI refers questions related to the Familial Status Protected Class to MDHR. Under WESA, “familial status” is 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 as a: (1) 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.³

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 the employer’s size or the employee’s length or amount of service to the employer.

³ See, M.S. §363A.03, Subd. 18.

Conclusion

From July 1, 2014, to Sept. 1, 2015, DLI has completed 31 investigations of alleged violations of the five WESA provisions within its legal authority. DLI has also provided both employers and employees with guidance on these laws through outreach and the creation of several informative fact sheets now available on DLI's website.

In large part, DLI has found employers willing and able to comply with WESA once they are aware of and educated about the law. DLI has created a frequently asked questions page on its website in order to provide answers to the questions it receives most often.

DLI continues to increase its outreach efforts to businesses, community based organizations, worker representatives and the media to ensure that both employers and employees understand their rights and obligations under WESA.