



Women's Economic Security Act

Annual Report

December 2020

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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);
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 employer/employee 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 2019 through August 2020) and since the law’s adoption in spring 2014.

DLI annual WESA investigative summary

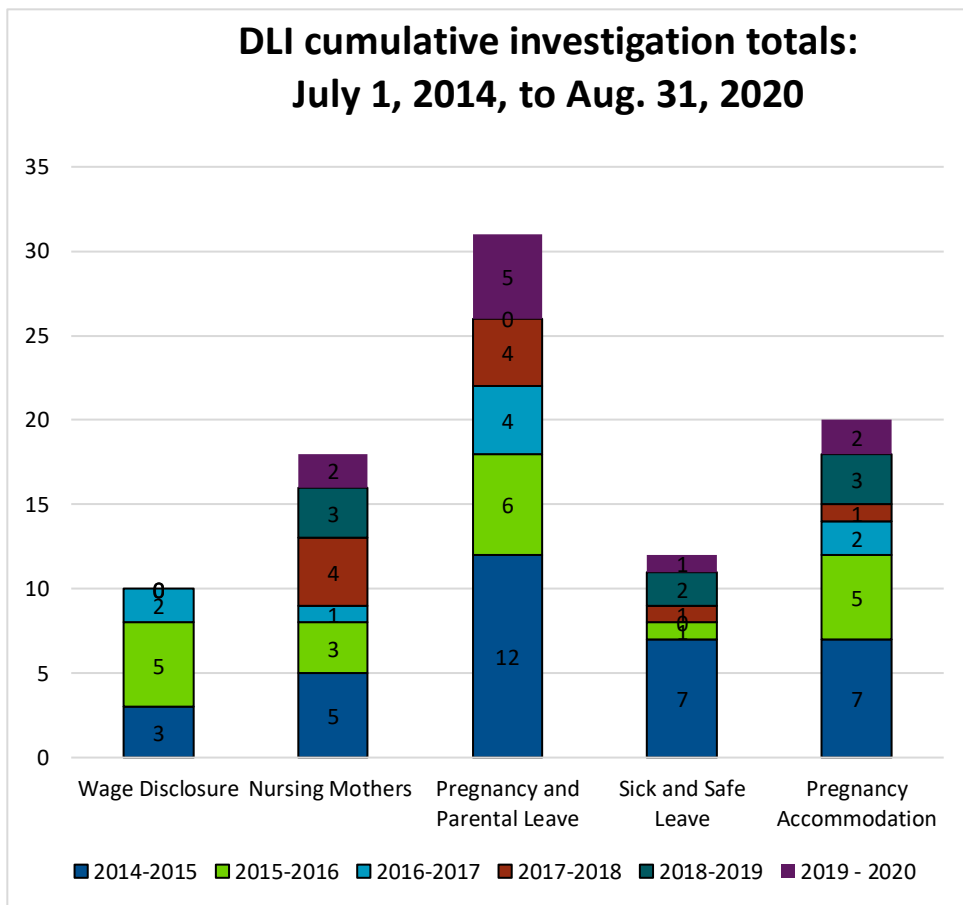
September 2019 through August 2020

Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	0	0	0
Pregnancy Accommodations	2	1	0
Pregnancy and Parenting Leave	5	5	0
Nursing Mothers	2	2	0
Sick Leave Benefits; Care of Relatives	1	1	0
Total	10	9	0

DLI cumulative WESA investigative summary

July 2014 through August 2020

Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	10	10	5
Pregnancy Accommodations	20	19	4
Pregnancy and Parenting Leave	31	31	2
Nursing Mothers	18	18	11
Sick Leave Benefits; Care of Relatives	12	12	0
Total	91	90	22



Outreach and referrals

From Sept. 1, 2019, through Aug. 31, 2020, DLI participated in 107 events that included outreach about WESA. 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. New this year, DLI contracted with the Wilder Foundation to conduct research into employee and employer knowledge of their rights and responsibilities under the nursing mothers and pregnancy accommodation provisions of WESA. The research findings will help inform future DLI outreach and engagement strategies to raise awareness about employee rights and employer responsibilities related to WESA.

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 (Minnesota Statutes § 181.172);
2. Pregnancy Accommodations (M.S. § 181.9414);
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 WESA under the commissioner’s authority of 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. Ch. 181.

WESA enforcement summary

From July 2014 through August 2020, DLI completed 90 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 the responsibilities through DLI’s investigative and outreach efforts, employers typically came into compliance willingly and expeditiously.

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 (not required to be consecutive) and at least half time during the 12-month period preceding

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

the leave. In addition, the Sick Leave Benefits; Care of Relatives, Pregnancy and Parenting Leave, and the Pregnancy Accommodation laws only apply to employers that employ 21 or more employees.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 18 complaints alleging failure of an employer to provide proper accommodations to nursing mothers. In each case, employers are 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.

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

Finally, continued outreach and engagement about WESA to employers and workers is recommended to raise greater awareness about employer obligations and workers' rights under these laws.

WESA laws enforced by DLI

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

The Wage Disclosure Protection law prohibits employers from requiring employees not to 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

²There is a case pending before the Minnesota Supreme Court regarding whether the definition of employee under M.S. § 181.940, subd. 2, applies to employees seeking accommodations due to pregnancy. The court of appeals case is Hinrichs-Cady v. Hennepin County, Minn. Ct. App., 4/20/20 -- <https://cases.justia.com/minnesota/court-of-appeals/2020-a19-1561.pdf?ts=1587400374>.

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

From Sept. 1, 2019, through Aug. 31, 2020, DLI did not receive a wage disclosure complaint. Since the law's inception, DLI has received eight complaints alleging violations of these laws.

2015 DLI case example: DLI received a photograph of an employee time clock located at a sports bar in Blue Earth, Minnesota. Below the time clock was a sign in uppercase letters stating, "It is illegal to discuss your wage with another co-worker, if you do this is grounds for termination." DLI contacted the employer and learned it also had a written handbook policy prohibiting discussion of wages. DLI informed the employer the practice violates the wage disclosure law and required the employer to remove the time-clock sign, rewrite its employee handbook and implement a new wage disclosure policy consistent with the law.

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

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

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 is limited to employees who work for employers that employ 21 or more employees at one site. Other eligibility requirements for pregnancy accommodation protection are the subject of litigation currently before the Minnesota Supreme Court. The court is currently considering whether a worker can assert a claim for protection under M.S. § 181.9414 for pregnancy accommodation when that worker had been employed for fewer than 12 months by their employer.

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 doctor or otherwise prove the accommodation is necessary. An employer may not deny any of these automatic 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 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 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, 2019, through Aug. 31, 2020, DLI received two complaints related to the Pregnancy Accommodations law. One of these cases remains open for investigation. The other case is described below.

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 M.S. § 181.9414, subd. 4, which prohibits employers from requiring an employee to accept an accommodation. 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 worked for that employer for at least 12 months and have worked at least half-time during the previous 12 months.

From Sept. 1, 2019, through Aug. 31, 2020, DLI received five complaints related to the Pregnancy and Parenting Leave law. In all five of these cases, DLI was able to inform and educate the employer regarding the laws about pregnancy and parental leave and bring the employer into compliance with the 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 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.

An employer 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 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.

From Sept. 1, 2019, through Aug. 31, 2020, DLI received two complaints related to the Nursing Mothers law. The employers in these cases were contacted within two business days and the complaint investigated within 10 days of receiving the complaint, as is required under M.S. § 181.9435. In one of these cases, the employee was given a small room in which to express milk. This room was not free from intrusion and she was interrupted several times. She quit before making a complaint to DLI. DLI still reached out to the employer to inform and educate them about the Nursing Mothers law and to ensure future compliance with the law. In the other case, the complainant alleged retaliation by her employer in response to her asserting her rights under the Nursing Mothers law. DLI conducted an investigation and found no retaliation had occurred and there were other circumstances that led to the employee's dismissal.

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

The Sick Leave Benefits; Care of Relatives (or sick and safe leave) law 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, 2019, through Aug. 31, 2020, DLI received one complaint alleging violations of the sick and safe leave law. The investigator reached out to the complainant to get additional information but was unable to reach them. Without additional information, DLI was unable to open an investigation.

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. 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 includes 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 more easily find information about their rights and responsibilities. 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, 2019, through Aug. 31, 2020, DLI participated in 107 outreach events where it provided WESA information or training.

Finally, in addition to its ongoing efforts to raise awareness about WESA, DLI is developing and implementing a WESA Outreach Plan in the next year that will focus resources on raising awareness about the nursing mother and pregnancy accommodation protections. This plan will include some of the following activities:

- development and distribution of an informative brochure and social media content;
- development of an informative video;
- engagement collaborations with community and agency partners involved in women’s economic security issues and that have connections to childbearing women, such as WIC offices, breastfeeding coalitions and local public health offices.

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.

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 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 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 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.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.

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

Conclusion

From July 2014 through August 2020, DLI completed 90 investigations of alleged violations of the five WESA provisions within its legal authority. Through continued outreach and engagement about WESA to employers and workers, DLI continues to raise awareness and help employers remain in compliance with these workplace protections.

This report was prepared by:

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