



## Paid Family Medical Leave Memo – HF2/SF2

### **Paid Family Medical Leave Bill Information**

Bill: [HF2](#) | [SF2](#)

Research Summary: [House](#) | [Senate](#)

Fiscal Note: Not Yet Available

**What does this bill do?** Establishes a portable paid family and medical leave benefit for all employees. It allows employees to take up to 12 weeks medical leave and up to 12 weeks of leave for bonding, safety or family care, while receiving pay on a sliding scale. Additionally, provides up to 12 weeks of benefits for one or more qualifying exigencies (ie military leave). The leaves may be taken each benefit year.

### **Where will the paid and family medical leave program be managed?**

- The Department of Employment and Economic Development (DEED).
- The bill establishes a new division, the Family and Medical Benefit Insurance Division. The division will administer and operate the benefit program.

**Who is an employee?** All employees of an employer.

### **When is an employee eligible?**

- 90 days from date of hire, an employee has the right to leave employment for any day, or portion of the day, for which an employee is benefit eligible.
- The employee must have wage credits at least 5.3% of the state's average annual wage rounded down to the next lowest \$100.

**What benefits is the employee eligible for?** Each benefit year, the employee is eligible for:

- 12 weeks of benefits for applicants serious health condition or pregnancy through the medical benefit program.
- 12 weeks of benefits for family care, bonding or safety leave through the family benefit program. Additionally, exigencies (military leave) is available for 12 weeks of benefits to those who qualify.

### **Who is defined as a family member?**

- **Family Member:** means, with respect to an employee:
  - a spouse, including domestic partner in a civil union or other registered domestic partnership by the state, and a spouse's parent;
  - a child and a child's spouse;
  - a parent and a parent's spouse;
  - a sibling and a sibling's spouse;
  - a grandparent, grandchild, or spouse of a grandparent or grandchild;
  - any other individual who is related by blood or affinity and whose association with the employee is equivalent of a family relationship. This includes: a child of a sibling of the employee; a siblings of the parents of the employee; a child-in-law, a parent-in-law, a sibling-in-law, and a grandparent-in-law; and an individual who has resided at the same address as an employee for at least one year as of the first day of leave.

**Who will pay the benefit?** DEED will pay the benefits from the family and medical benefit insurance account to applicants who file an application and meet eligibility requirements.

- Benefits are paid from state funds and are not considered paid from any special insurance plan, nor as paid by an employer.



## **Paid Family Medical Leave Memo – HF2/SF2**

- An application for family or medical leave benefits is not considered a claim against an employer but is considered a request for benefits from the family and medical benefit insurance account.
- The Commissioner is responsible for proper payment of benefits.

**What is the pay frequency of the benefit to the employee?** The benefit is paid weekly.

### **What is the cost to the employer?**

- Employer premium rates beginning January 1, 2024 are 0.7% on taxable wages.
- Beginning January 1, 2026, and each calendar year after, the commissioner must adjust the annual premium rates using formula prescribed in statute.
- The premium rate defined is on the taxable wages paid to each employee.
- Employers may deduct up to 50% of annual premiums paid from employee wages.
  - Deductions must not cause an employee's wage, after the deduction, to fall below the rate required to be paid to the worker by law – including any applicable statute, regulation, rule, ordinance, government resolution or policy, contract or other legal authority, whichever rate of pay is greater.

### **How will the employer pay?**

- The commissioner must maintain a premium account for each employer. The commissioner must assess the premium account for all premiums due and credit the family and medical benefit insurance account with all premiums paid.
- The commissioner must compute the premium due from the wage detail report and notify the employer of the premium due.
- Any amount due from an employer, as computed by the commissioner, is presumed to be correctly determined and assessed, and the burden is upon the employer to show its incorrectness.
- The premium must be paid to the family and medical benefit insurance account and must be received by the department on or before the last day of the month following the end of the calendar quarter.
- If for any reason the wages on the wage detail report are adjusted for any quarter, the commissioner must recompute the premiums due for that quarter and assess the employer for any amount due or credit the employer as appropriate.
- Failure of an employer to pay premiums does not impact the right of an employee to benefits.

**How often will an employer pay premiums?** Each employer must pay premiums quarterly.

### **How will the state know what premium charge an employer?**

- Each employer must submit, under the employer premium account, a quarterly wage detail report by electronic transmission. The format will be prescribed by the commissioner.
- The wage detail report must include for each employee in covered employment during the calendar quarter, the employee's name, Social Security number, the wages paid to the employee, and total number of paid hours worked.
- The report is due and must be received by the commission on or before the last day of the month following the end of the calendar quarter.
- Any employer that fails to submit the quarterly wage detail report when due must pay a late fee of \$10 per employee.



## **Paid Family Medical Leave Memo – HF2/SF2**

### **What is the state's administrative cost to run the program?**

- From January 1, 2024 – December 31, 2024, the commissioner may spent up to 7% of premiums collected for the administration for the program.
- Beginning January 1, 2025, and each calendar year thereafter, the commissioner may spend up to 7% of the projected benefit payments for that calendar year for administration.

### **Is there public outreach regarding the paid family medical leave program? Yes.**

- The commissioner must use at least 0.5% of revenue collected under the program for the purpose of outreach, education, and technical assistance for employees, employers, and self-employed individuals eligible to elect coverage.
- At least one-half of the amount spent under this section must be used for grants to community-based groups.

### **Is there small business assistance? Yes.**

- Employers with 50 or fewer employees may apply to the department for a:
  - Grant up to \$3,000 if the employer hires a temporary worker to replace an employee on family or medical leave for a period of seven days or more.
  - Grant up to \$1,000 as reimbursement for significant additional wage-related costs due to the employee's leave.
- To be eligible for consideration or a grant, the employer must provide the department written documentation showing the temporary worker hired or significant wage related costs incurred are due to an employee's use of family or medical leave.
- To determine an employers size,, the commissioner shall average the number of employees reported by an employer over the last four completed quarters to determine the size of the employer.
- Grants may be awarded up to a maximum of \$5,000,000 per calendar year.

### **How does an employee apply for benefits?**

- An application may be filed in person, by mail, or online to the state through DEED.
- The applicant must include certification supporting a request for leave and must meet eligibility requirements at the time the application is filed.
- The Commissioner will make a determination of eligibility or ineligibility and will notify the applicant and all base period employers, by mail or electronic transmission.
- A continued request for family or medical leave benefits is a certification by an applicant, done on a weekly basis, that the applicant is unable to perform usual work due to a qualifying event and meets the ongoing eligibility requirements.
- Applicant must file request/continued request for benefits with the state.

### **How does the state determine employee eligibility for benefits?**

- Any claim for benefits must be based on a single qualifying event of at least 7 calendar days.
- Benefits may be paid for a minimum duration of 8 consecutive hours in a week. If an employee claims 8 hours at any point during a week, the minimum duration is satisfied.
- The applicant must be unable to perform regular work due to a serious health condition; a qualifying exigency; safety leave, family care, bonding, pregnancy or recovery from pregnancy.
- Applicant is not eligible to receive benefits for any portion of a typical workweek the applicant is receiving, has received or will receive vacation pay, sick pay or personal time off ("PTO").
- Applicant must fulfill certification requirements.



## Paid Family Medical Leave Memo – HF2/SF2

### Leave Benefit Programs Available

<b>Medical Benefit Program</b>	“Medical benefit program” means the program administered for the collection of premiums and payments of benefits related to an applicant’s serious health condition or pregnancy; as listed below.
<b>Serious Health Condition</b>	<p>“Serious health condition” means a physical or mental illness, injury, impairment, condition or substance use disorder that involves:</p> <ul style="list-style-type: none"> <li>• At-home care or inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or</li> <li>• Continuing treatment or supervision by a health care provider which includes any one or more of the following: <ul style="list-style-type: none"> <li>➤ A period of incapacity for more than 3 consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:</li> <li>➤ Treatment 2 or more times by a health care provider or a provider of health care services, under the orders of, or on referral by, a health care provider; or</li> <li>➤ Treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the healthcare provider;</li> <li>➤ Period of incapacity due to pregnancy or for prenatal care;</li> <li>➤ A period of incapacity or treatment for a chronic health condition that: requires periodic visits, defined as at least twice a year; continues of an extended period of time, including recurring episodes of a single underlying condition; and may cause episodic rather than continuing periods of incapacity.</li> </ul> </li> </ul> <p>*Please read full definitions and details in Subd37 of 268B.01 - DEFINITIONS</p>
<b>Pregnancy</b>	“Pregnancy” means prenatal care or incapacity due to pregnancy or recovery from childbirth, still birth, miscarriage, or related health conditions.
<b>Family Benefit Program</b>	“Family benefit program” means the program administered for the collection of premiums and payments of benefits as related to family care, bonding, safety leave and leave related to a qualifying exigency; as listed below.
<b>Family Care</b>	“Family care” means an applicant caring for a family member with a serious health condition or caring for a family member who is a covered service member. <i>See family member definition below.</i>
<b>Bonding Leave</b>	“Bonding” means time spent by an applicant who is a biological, adoptive, or foster parent with a biological, adopted or foster child in conjunction with a child’s birth, adoption, or placement.
<b>Safety Leave</b>	<p>“Safety leave” means leave from work because of domestic abuse, sexual assault, or stalking of the employee or employee’s family member, provided the leave is to:</p> <ol style="list-style-type: none"> <li>(1) Seek medical attention related to the physical or psychological injury or disability caused by domestic abuse, sexual assault or stalking;</li> <li>(2) obtain services from a victim services organization;</li> <li>(3) obtain psychological or other counseling;</li> <li>(4) seek relocation due to the domestic abuse, sexual assault, or stalking or;</li> <li>(5) seek legal advice or take legal action, including preparing for or participation in any civil or criminal legal proceeding related to, or resulting from the domestic abuse, sexual assault, or stalking.</li> </ol>
<b>Qualifying Exigency</b>	“Qualifying exigency” means a need arising out of a military member’s active duty service or notice for an impending call or order to active duty in the United States armed forces, including providing for the care or other needs of the family member’s child or other dependent; making financial or legal arrangements for the family member, attending counseling, attending military events or ceremonies, spending time with the family member during a rest and recuperation leave or following return from deployment, or making arrangements following the death of the military member.



## Paid Family Medical Leave Memo – HF2/SF2

### What is incapacity defined as?

- **Incapacity** – means inability to perform regular work, attend school, or fully perform other regular daily activities due to a serious health condition, treatment therefore, or recovery therefrom.

### Certification Requirements by Leave Benefit Request

<b>Serious Health Condition</b> [Of Applicant]	Sufficient if the certificate states the date on which the serious health condition began, the probable duration of the condition, and the appropriate medical facts within the knowledge of the health care provider as required.
<b>Care of Family Member with a Serious Health Condition</b>	Sufficient if the certification states the date on which the serious health condition commenced, the probable duration of the condition, the appropriate medical facts within the knowledge of the health care provider as required, and an estimate of the amount of time that a family member will require care.
<b>Pregnancy</b> [Of Applicant]	Sufficient if the certification states the expected due date and recovery period based on appropriate medical facts within the knowledge of the healthcare provider.
<b>Bonding Leave</b> [placement of child for adoption or foster care]	Sufficient is the application provides a document issued by health care provider of the child, an adoption or foster care agency involved in the placement, or other individuals as determined by the commissioner that confirms the placement and date of placement.
<b>Safety Leave</b>	Sufficient if the certification includes a court record or documentation signed by a volunteer or employee of a victim's services organization, an attorney, a police officer, or an antiviolence counselor. The commissioner must not require disclosure of details relating to an applicant's or applicant's family member's domestic abuse, sexual assault, or stalking.
<b>Qualifying Exigency</b> [Military Leave]	Sufficient if the certification includes a copy of the family member's active-duty orders; other documentation issued by the US armed forces; or other documentation permitted by the commissioner.

**\*\* Health care provider** means an individual who is licensed, certified, or otherwise authorized under law to practice in the individual's scope of practice as a physician, osteopath, surgeon or advanced practice nurse; or any other individual determined by commissioner by rule.

### How will an employer be notified of an employee's family or medical leave benefit request?

#### **BY DEED**

- Upon determination that an applicant is entitled to benefits, the commissioner must promptly send a notification to each current employer of the application.
- The notification must require, at a minimum: the name of the applicant; that the applicant has applied and received benefit; the week the benefits commence; the weekly benefit payable amount; and the maximum duration of benefits.

#### **BY EMPLOYEE**

- If the need for leave is foreseeable, an employee must provide the employer at least 30 days' advance notice before leave is to begin.
- If 30 days' notice is not practicable because of lack of knowledge of approximately when leave will be required to begin, a change in circumstances, or a medical emergency – notice must be given as soon as practicable.
- Whether leave is to be continued or is to be taken intermittently or on a reduced-schedule basis, notice need only be given one time, but the employee must advise the employer as soon as practicable if dates of schedule leave change or are extended, or were initially unknown.



## **Paid Family Medical Leave Memo – HF2/SF2**

- In those cases when an employee is required to provide at least 30 days' notice of foreseeable leave and does not do so, the employee must explain reasons why notice was not practicable upon request of the employer.
- An employee shall provide at least oral, telephone, or text message notice sufficient to make the employer aware that the employee needs leave and the anticipated timing and duration of the leave.
- An employer may require an employee giving notice of leave to include certification for the leave. Such certification, if required by an employer, is timely when the employee delivers it as soon as practicable given the circumstances requiring the need for leave, and the contents of the certification.
- An employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances or other circumstances caused by the reason of the employee's need for leave. However, leave may not be delayed or denied where an employer's usual and customary notice or procedural requirements require notice to be given sooner than set forth in law.

### **Can an employee take an intermittent or reduced-leave schedule? Yes.**

- For a serious health condition, leave may be taken intermittently or on a reduced-leave schedule if such leave is reasonable and appropriate to the needs of the individual with the serious health condition.
- For all other leaves, leave may be taken intermittently or on a reduced leave schedule.
- Intermittent leave is taken in separate blocks of time due to a single, seven-day qualifying event.
- A reduced leave schedule is a leave that reduces an employee's usual number of working hours per workweek or hours per workday.
- For leave taken on an intermittent or reduced-schedule basis, based on a serious health condition of an applicant or applicant's family member, the certification must include an explanation of how such leave would be medically beneficial to the individual with the serious health condition.
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### **How does this work in concurrence with other leave?**

- An employer may require leave taken for paid family medical leave benefits to run concurrently with leave taken for the same purpose under section 181.941 or the Family and Medical Leave Act, United States Code, title 29, section 2601 to 2654, as amended.
- An employer may not compel an employee to exhaust accumulated sick, vacation or personal time before or while taking paid family medical leave.

### **What protections does the employee have while on leave receiving the benefits?**

- Retaliation prohibited – an employer must not retaliate against an employee for requesting or obtaining benefits, or for exercising any other right under the leave.
- Interference prohibited – an employer must not obstruct or impede an application for leave or benefits or the exercise of any other rights under leave.
- Waiver of rights – any agreement to waive, release, or commute rights to benefits or any other right under the leave is void.
- No assignment of benefits – any assignment, pledge, or encumbrance of benefits is void. Benefits are exempt from levy, execution, attachment or any other remedy provided for the collection of debt.
- Continued insurance – during any leave for which an employee is entitled to benefits under this leave, the employer must maintain coverage under any group insurance policy, group subscriber





## Paid Family Medical Leave Memo – HF2/SF2

contract, or health care plan for the employee and any dependents as if the employee was not on leave, provided, however, that the employee must continue to pay any employee share of the cost of such benefits.

- Employee right to reinstatement – on return from leave, an employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or the employee's position has been restructured to accommodate the employee's absence.
  - This includes entitlement to unconditional pay increases which may have occurred during the leave period, such as cost of living increases.
- Benefits – at the end of an employee's leave, benefits must be resumed in the same manner and at the same levels provided when the leave began. An employee must not be required to requalify for any benefits the employee enjoyed before leave began.
- Pension/Retirement Plans – leave granted must not be treated or counted toward a break in service for the purposes of vesting and eligibility to participate.
- Equivalent position – must have substantially similar duties, conditions, responsibilities, privileges and status as employee's original position.
- Worksite – must be reinstated to the same or geographically proximate worksite from where the employee had previously been employed. If the employee's original worksite has been closed, the employee is entitled to the same rights as if the employee had not been on leave when the worksite closed.
- Shift schedule – the employee is ordinarily entitled to return to the same shift or the same or an equivalent work schedule.
- Employers are not prohibited from accommodating an employee's request to be restored to a different shift, schedule, or position which better suits the employee's personal needs on return from leave, or to offer a promotion to a better position. However, the employee must not be induced by the employer to accept a different position against the employee's wishes.

### **Can employer offer a substitute paid family medical leave plan? Yes.**

- Employers may apply to the commissioner for approval to meet their obligations through the substitution of a private plan that provides paid family, paid medical, or paid family and medical benefits. In order to be approved as meeting an employer's obligations, a private plan must confer all the same rights, protections, and benefits provided to employees consistent with the program established.
- The commissioner must approve the program and requirements of the program are laid out in section 268B.10.

**How is the benefit wage determined for the employee/applicant receiving the benefit?** DEED will determine the benefit based on the application and reviewing the reported wages and applicant's average weekly wage during the base period.

- *Applicant's average weekly wage:* means an amount equal to the applicant's high quarter wage credits divided by 13.
- *Base Period:* means the most recent 4 completed calendar quarters before the effective date of an applicant's application for family or medical leave benefits if the application has an effective date occurring after the month following the most recent completed calendar quarter.



## Paid Family Medical Leave Memo – HF2/SF2

The base period is as follows:

If the application for family or medical leave benefits is effective on or between these dates:	The base period prior is:
February 1 to March 1	January 1 to December 31
May 1 to June 30	April 1 to March 31
August 1 to September 30	July 1 to June 30
November 1 to December 31	October 1 to September 30

If an application for family or medical leave benefits has an effective date that is during the month following the most recent completed calendar quarter, then the base period is the first four of the most recent five completed calendar quarters before the effective date of the applicant's application. The base period is as follows:

If the application for family or medical leave benefits is effective on or between these dates:	The base period prior is:
January 1 to January 31	October 1 to September 30
April 1 to April 30	January 1 to December 31
July 1 to July 31	April 1 to March 31
October 1 to October 31	July 1 to June 30

There are specific formulas if the applicant does not have sufficient calendar quartered wages at the employer or if they have experienced a loss of wages.

**What does high water mean?** It means the calendar quarter in an applicants base period with the highest amount of wage credits.

### What is a typical work week?

- For an hourly employee: the average number of hours worked per week by an employee within the high quarter during the base year.
- For a full-time salary employee: 40 hours, regardless of number of hours worked the salaried employee typically works.

### What are considered wages?

- *Wages* means all compensation for employment, including:
  - commissions;
  - bonuses, awards and prizes;
  - severance payments;
  - standby pay;
  - vacation and holiday pay;
  - back pay as of the date of payment;
  - tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer;
  - sickness and accident disability payments;
  - the cash value of housing, utilities, meals, exchanges of services and any other goods and services.
  - Exceptions that are not counted: include insurance payments, retirement, payment of the tax imposed upon an employee under US code of FICA, value of any special





## Paid Family Medical Leave Memo – HF2/SF2

discounts/markdowns on goods/services, the value of parking facilities paid for or provided by employer; travel reimbursements; royalties to an owner of a franchise, etc.

### How is the benefit calculated?

- The weekly benefit is calculated by adding amounts obtained by applying the following percentage to an applicant's average typical workweek and weekly wage during the high quarter of the base period:
  - 90% of wages** of wages that do not exceed 50% of the states average weekly wage; plus
  - 66% of wages** that exceed 50% of the state's average weekly wage but not 100%, plus
  - 55% of wages** that exceed 100 percent of the state's average weekly wage.
- Weekly benefit amount is prorated when:
  - The employee works hours for wages;
  - The employee uses paid sick leave, paid vacation leave, or other paid time off that is not considered a supplemental pay benefit.

### If an individual is overpaid benefits, will they have to pay it back? Yes.

- Any applicant that has received any family or medical benefits that the applicant was held not entitled to, is overpaid the benefits and must promptly repay the benefits to the family and medical benefit insurance account.
- If the applicant fails to repay the benefits overpaid, including any penalty and interest, the total due may be collected by methods allowed under state and federal law.

### How does the Minnesota program compare to other states with Paid Family Medical Leave?

Small Business Comparison of SF 2/HF 2 to Other State PFML Programs						
State	Premium	Premium Allocation	Premium Cap	Weekly Benefit	Standard Total Leave Weeks*	Small Businesses Treatment
MN	0.7% of FICA wages (est. yr 1)	Employers pay a minimum of 50% of total premium	Premium can increase up to 1.45x of prior year claims) Senate: 1.2% maximum House: No maximum	90% wages < 50% SAWW** + 66% wages 50% to 100% SAWW + 55% wages > 100% SAWW; weekly max: SAWW	24 weeks	No size-based small business exemptions.
CO	0.9% of FICA wages (2023)	Employers pay a minimum of 50% of total premium	Maximum: 1.2% of wages	90% wages < 50% SAWW + 50% wages 50% to 100% SAWW; max weekly benefit: 90% SAWW	12 weeks	Employers <10 employees exempt from employer share of premium; must remit employee's share
CT	0.5% of FICA wages	Employees pay entire premium	Maximum: 0.5% of wages	95% wages < 40x state min wage + 60% wages > 40x state min wage; weekly max: 60x state min wage	12 weeks	No size-based small business exemptions.
DE	0.8% of FICA wages (est. yr 1)	Employers pay a minimum of 50% of total premium	Maximum: 1% of wages; benefits adjusted to meet premium cap	80% of worker's average weekly wage; weekly max: \$900 (+ yearly CPI)	Parental: 12 weeks in 12 months Medical & Caregiving: 6 weeks in 24 months	Employers <10 employees are exempt from program Businesses closed for more than 30 consecutive days in a year are exempt from program Employers with 10-24 employees only required to participate in parental leave program Employers <25 employees can opt to reduce parental leave to 6 weeks until 1/1/2031
MD	TBD pending actuarial study (due by 6/1/23)	TBD pending actuarial study (due by 6/1/23)	TBD pending actuarial study (due by 6/1/23)	100% wages < 65% SAWW + 50% wages > 65% SAWW; weekly max: \$1,000 (adj. by dept.)	12 weeks	Employers <15 employees exempt from employer share of premium; must remit employee's share
OR	1% of FICA wages (2023)	Employers pay a minimum of 40% of total premium	Maximum: 1% of wages	100% wages < 65% SAWW + 50% wages > 65% SAWW; weekly max: 120% SAWW	12 weeks	Employers <25 employees exempt from employer share of premium (if opt out, cannot receive small employer assistance grants); must remit employee's share
WA	0.8% of FICA wages (2023)	Medical: employers pay a minimum of 55% Family: employees pay up to 100%	Premium Maximum: 0.6% Solvency Fee Max: 0.6% Total Premium Max: 1.2%	90% wages < 50% SAWW + 50% wages 50% to 100% SAWW; weekly max: 90% SAWW	16 weeks	Employers <50 employees exempt from employer share of premium (if opt out, cannot receive small employer assistance grants); must remit employee's share

\*Certain programs provide additional weeks for pregnancy or childbirth complications

\*\*SAWW: Statewide Average Weekly Wage