



Women's Economic Security Act

Annual Report

October 2018

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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 2017 through August 2018) and since the law’s adoption in spring 2014.

DLI annual WESA investigative summary

September 2017 through August 2018

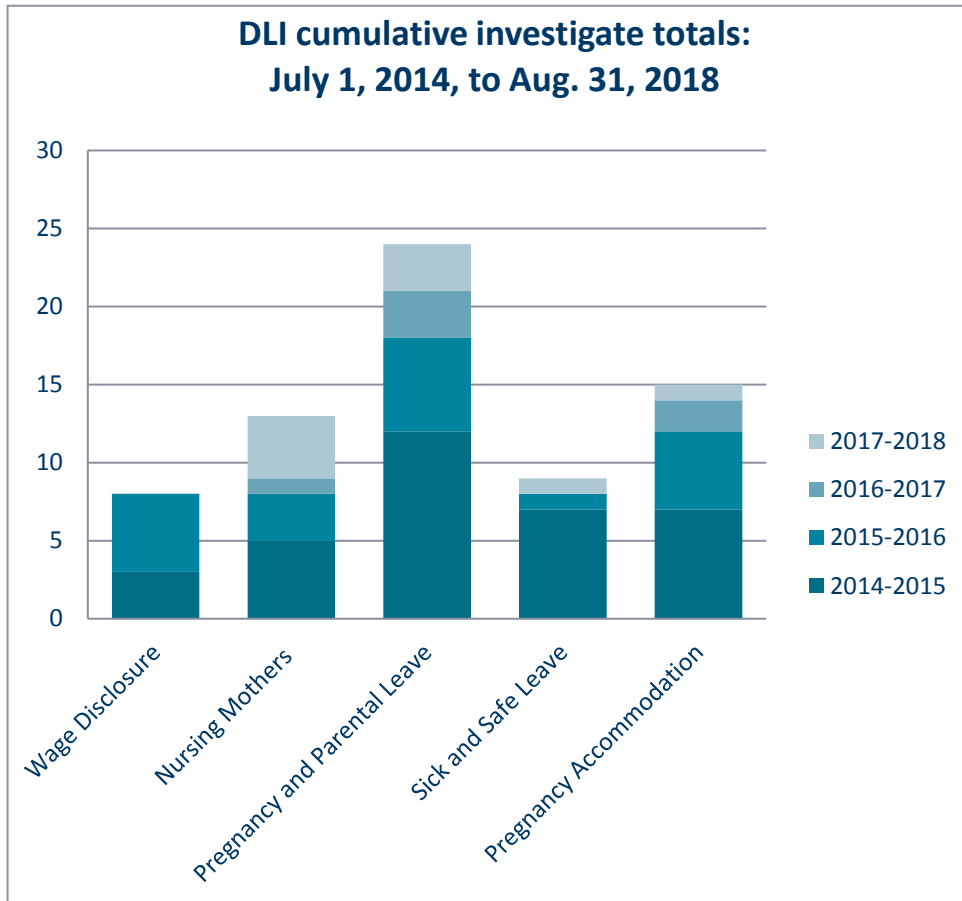
Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	0	0	0
Pregnancy Accommodations	1	1	1
Pregnancy and Parenting Leave	3	3	2
Nursing Mothers	4	4	4
Sick Leave Benefits; Care of Relatives	1	1	0
Total	9	9	7

DLI cumulative WESA investigative summary

July 2014 through August 2018

Complaint type	Complaints filed	Complaints closed	Violations found
Wage Disclosure Protection	10	8	5
Pregnancy Accommodations	17	13	4
Pregnancy and Parenting Leave	25	22	2
Nursing Mothers	13	13	11
Sick Leave Benefits; Care of Relatives	9	9	0
Total	74	64	22

The chart below shows the total number of complaints taken for each type of WESA investigation. The darkest blue portion (bottom) indicates cases taken from July 1, 2014, through Aug. 31, 2015. The next lightest blue portion (middle/bottom) indicates cases taken from Sept. 1, 2015, through Aug. 31, 2016. The next lightest blue portion after that (middle/top) indicates cases taken from Sept. 1, 2016, through Aug. 31, 2017. And, finally, the lightest blue portion (top) indicates cases taken from Sept. 2, 2017, through Aug. 31, 2018.



Outreach and referrals

During this reporting period, DLI has conducted 40 outreach events and has continued to develop 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 to the Minnesota Department of Human Rights. New this year, DLI sent a letter to employers addressing frequently asked questions about a variety of WESA topics.

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.

WESA enforcement summary

From July 2014 through August 2018, DLI completed 64 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 end up not meeting the strict definition of employee under the Sick Leave Benefits; Care for Relatives, Pregnancy and Parenting Leave, and Pregnancy Accommodations laws. These laws require employees to have worked for the employer for at least 12 months (not required to be consecutive) and to have worked for the employer for at least half time in the 12 months preceding the request for leave or accommodation.

Third, all Nursing Mothers accommodation complaints have been investigated within the 10-day statutory requirement by DLI. Since the Nursing Mothers law’s inception in 2014, DLI has received thirteen complaints regarding failure of an employer to provide proper accommodations to nursing mothers. In each case,

¹Minnesota 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).

employers are quickly educated about the requirements of the law. When a violation was found by DLI in an investigation, each employer under review came into compliance quickly.

Fourth, no employer has had repeat complaints made against it 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 safeguarded by 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 800-342-5354.²*

From Sept. 1, 2017, through Aug. 31, 2018, DLI did not receive a wage disclosure complaint.

2015 DLI case example: DLI received a photograph of an employee time-clock located at a sports bar in Blue Earth, Minnesota. Below the timeclock 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.

²See www.dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs.

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

The Pregnancy Accommodations law requires that employers provide reasonable accommodations to employees with health conditions related to pregnancy or childbirth.

Eligibility for pregnancy accommodations protection under WESA 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 for at least half-time during the previous 12 months.

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 an automatic accommodation.

Automatic pregnancy accommodations are:

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. 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, 2017, through Aug. 31, 2018, DLI received one complaint related to the Pregnancy Accommodations law. This case was closed after an interview with the complainant revealed that she was not eligible for pregnancy accommodation because she had not worked for the employer for 12 months, a requirement under the definition of "employee" for this law.

2016 DLI case example: An anonymous elementary school employee contacted DLI stating she was not receiving the automatic pregnancy accommodations from her employer. DLI contacted the employer and requested a comprehensive list of accommodations the school was providing to pregnant employees. The employer was both aware of the requirements under the Pregnancy Accommodations law and was providing accommodations.

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.

Eligibility for pregnancy and parenting 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 worked for that employer for at least 12 months and have worked at least half-time during the previous 12 months.

2017 DLI case example: An employee at a 24-hour fitness gym alleged she was denied parenting leave because the employer could not have her out for 12 weeks. DLI determined the employer did not have 21 employees at any one site in Minnesota. Therefore, the employee was not covered by the Pregnancy and Parenting Leave law. The employee was referred to the Minnesota Department of Human Rights to identify possible sex or pregnancy discrimination.

Parents are also protected by the School Conference and Activities Leave law (M.S. § 181.9412). Every employee is entitled to take up to 16 hours unpaid leave a year to attend their children’s school conference, classroom activities, and child care or other early childhood program. Employees may use paid vacation time to attend these activities and may opt to take the time unpaid even if they have paid vacation or sick time available.

2017 DLI case example: An employee at a health care company complained to DLI that the employer limited use of school activities leave to 16 hours per employee, rather than 16 hours per child of the employee. The employee in this case had already used 16 hours of conference and activities leave; however, the employee was entitled to an additional 16 hours of leave because the employee has two children. DLI clarified the statutory requirements and the employer agreed to grant additional hours of leave to all employees for school conferences and activities based on the employee’s number of children. This complaint was resolved before any employees were denied the right to attend conferences or activities.

From Sept. 1, 2017, through Aug. 31, 2018, DLI received three complaints related to the Pregnancy and Parenting Leave law. All three of these cases were related to the school conferences and activities leave provision of the parental leave law and in all cases employers agreed to comply with the law. The cases are now closed.

2018 update: This year the question arose of whether an employer can force an employee to use paid time off (PTO) to attend their child’s school conferences or activities. DLI reviewed the matter and informed the employer that the employee may choose to use their PTO or take the time unpaid.

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 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.

Further, an employer may not retaliate against an employee for asserting rights or remedies under the Nursing Mothers law.

From Sept. 1, 2017, through Aug. 31, 2018, DLI received four complaints related to the Nursing Mothers law. The employers in all of 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.

2018 DLI case example: DLI received a complaint that alleged the employer was not complying with either the room or the time requirements of the Nursing Mothers law.

One complainant alleged she was not given enough time to express milk during her shift.

The employer was a correctional facility that was required to keep certain staff levels in accordance with the Department of Corrections regulations and did not have reserve officers available to allow for nursing mothers' breaks.

DLI immediately educated the employer about the law and set up an on-site visit. The employer, investigator and complainant worked together to find a reasonable solution so the employee could take her needed breaks while not leaving the employer short-staffed and out of compliance with other laws.

After receiving assurance from the complainant that her issues had been resolved, DLI closed the file.

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, 2017, through Aug. 31, 2018, DLI received a complaint alleging violations of the sick and safe leave law.

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. During 2018, Labor Standards is piloting extended phone hours; previously available from 8 a.m. to 4:30 p.m., calls are now answered from 7:30 a.m. to 6 p.m. to provide more opportunities for direct service to callers.

Labor Standards has also provided written information about WESA to employers. On Sept. 7, 2018, Labor Standards sent an FAQs document about WESA to more than 450 organizations in a wide variety of industries, asking for distribution to their respective members. These organizations included trade associations, industry groups, chambers of commerce and other entities that provide assistance to Minnesota employers. The FAQs document summarized 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 provided 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 an email bulletin to help inform employers about the state’s minimum wage, overtime, tips, wage deductions, child labor and WESA requirements.

Finally, 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, 2017, through Aug. 31, 2018, DLI participated in 40 outreach events where it provided WESA information or training.

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.

DLI does not currently have a system to track the number of referrals to DEED.

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.

DLI also refers questions related to the Familial Status Protected Class law 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 size or the employee's length of service or amount of service to the employer.

Conclusion

From July 2014 through August 2018, DLI completed 64 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 employers remain in compliance with these workplace protections.

³Minnesota Statutes § 363A.03, subd. 18 (www.revisor.mn.gov/statutes/?id=363A.03).

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