



Women's Economic Security Act

Annual Report

December 2022

Minnesota Department of Labor and Industry
Labor Standards
443 Lafayette Road N.
St. Paul, MN 55155
Phone: 651-284-5005
Email: dli.laborstandards@state.mn.us
Web: dli.mn.gov

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Contents

Women’s Economic Security Act.....	1
Contents	3
Executive summary.....	4
DLI annual WESA investigative summary.....	4
DLI cumulative WESA investigative summary	5
Intake numbers (new this year).....	5
Outreach and referrals.....	5
Introduction.....	6
WESA enforcement summary	7
WESA laws enforced by DLI.....	7
I. Wage Disclosure Protection (M.S. § 181.172)	7
II. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939)	8
III. Pregnancy and Parenting Leave (M.S. § 181.941).....	9
IV. Nursing Mothers (M.S. § 181.939).....	10
V. Sick Leave Benefits; Care of Relatives (M.S. § 181.9413).....	11
DLI outreach	12
DLI referrals.....	15
Minnesota Department of Employment and Economic Development.....	15
Minnesota Department of Human Rights	15
Minnesota Department of Health.....	15
Conclusion	15

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 and revised in 2021. 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 until Dec. 31, 2021, thereafter M.S. § 181.939);
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 employee/employer 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 2021 through August 2022) and since the law’s adoption in spring 2014.

DLI annual WESA investigative summary

September 2021 through August 2022

Complaint type	Complaints filed	Complaints closed ¹	Violations found
Wage Disclosure Protection	5	4	2
Pregnancy Accommodations	3	6	5
Pregnancy and Parenting Leave	2	1	0
Nursing Mothers	10	11	6
Sick Leave Benefits; Care of Relatives	2	2	0
Total	22	24	13

¹ Complaints closed may exceed complaints filed due to closing complaints filed prior to the start of the reporting period.

DLI cumulative WESA investigative summary

July 2014 through August 2022

Complaint type	Complaints	Complaints	Violations
	filed	closed	found
Wage Disclosure Protection	24	17	9
Pregnancy Accommodations	27	26	9
Pregnancy and Parenting Leave	34	33	2
Nursing Mothers	32	32	19
Sick Leave Benefits; Care of Relatives	16	14	0
Total	133	122	39

Intake numbers (new this year)

On Oct. 11, 2021, the DLI Labor Standards unit started using a new case management system. This allowed for the tracking of intakes to the department by issue. The data provided here shows the number of inquiries DLI received on each of the WESA topics from Oct. 11, 2021, through Aug. 31, 2022. Some of these intakes were questions about the law, which DLI staff members were able to answer on the spot. Others were allegations of violations that resulted in the investigations listed in the tables above. Since the new case management system was not in place until Oct. 11, 2021, these statistics do not represent the full year encompassed in the rest of this report.

Oct. 11, 2021, through August 2022

Topic of inquiry	Number of intakes
Wage Disclosure Protection	18
Pregnancy Accommodations	39
Pregnancy and Parenting Leave	109
Nursing Mothers	71
Sick Leave Benefits; Care of Relatives	32
Total WESA Intakes	269

Outreach and referrals

From Sept. 1, 2021, through Aug. 31, 2022, DLI participated in 77 events that included outreach about WESA. Three of these events were specialized WESA webinars including DLI, the United States Department of Labor's Wage and Hour Division and the Minnesota Department of Health that brought together health professionals, county health offices and related nonprofit organizations.

DLI continues to maintain referral relationships with other state agencies concerning issues related to the rights established in 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. In response to the results of DLI’s contract with the Wilder Foundation in 2019 and 2020, DLI has initiated several new outreach and education efforts related to WESA. These are detailed later in this report.

Introduction

The Minnesota Women’s Economic Security Act (WESA) became law on Mother’s Day 2014.² 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 (M.S. § 181.172);
2. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939);
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 these WESA laws 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, which includes all five of these WESA laws.

In addition, effective Jan. 1, 2022, workplace protections for expectant and new parents were expanded. Changes include the following.

- Prohibiting covered employers from reducing an employee’s compensation for time used to express milk at work. The change does not require current unpaid break time, such as a meal break, to be converted to paid break time.
- Ensuring more employees have a right to request and receive needed pregnancy accommodations in the workplace, such as more frequent restroom, food and water breaks and limits to heavy lifting. The law now applies to employers with 15 or more employees (the prior law was 21 or more employees).

²Minnesota Session Laws 2014; Chapter 239 (revisor.mn.gov/laws/2014/0/Session+Law/Chapter/239/).

WESA enforcement summary

From July 2014 through August 2022, DLI completed 122 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. This highlights the importance of continuing DLI's outreach and education efforts to ensure employees and employers are aware of their rights and obligations under these laws.

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 apply to employers that employ 21 or more employees and 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 the leave.

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 32 complaints alleging failure of an employer to provide proper accommodations to nursing mothers. In each case, employers were quickly educated about the requirements of the law. When a violation was found by DLI in an investigation, most employers under review promptly came into compliance.

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

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

From Sept. 1, 2021, through Aug. 31, 2022, DLI received five wage disclosure complaints. Since the law's inception, DLI has received 25 complaints alleging violations of these laws.

2022 DLI case example: DLI received a complaint from an employee who stated their employer issued a non-disclosure agreement to all their employees prohibiting them from discussing their wages with other employees at the company. The employee was afraid to bring the issue up with their employer for fear of retaliation. DLI was able to reach out to the employer and explain the wage disclosure law. The employer provided a written response to the department stating it had taken corrective measures to avoid violating the wage disclosure law.

In addition to investigating complaints about this issue, Labor Standards investigators also identify when employers' written policies are in violation of this law. When that occurs, DLI educates the employer and provide DLI's sample written notice to employees about wage disclosure for inclusion in the employer's employee handbook.

II. Pregnancy Accommodations (M.S. § 181.9414 until Dec. 31, 2021, thereafter M.S. § 181.939)

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 changed Jan. 1, 2022, to allow protections under this law to any pregnant employee who works for an employer with 15 or more employees, regardless of how long the employee has worked for the employer.⁴

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

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

⁴Legislation passed during the first 2021 Special Session of the Minnesota Legislature that moved the pregnancy accommodation law into the nursing mothers' statute, M.S. 181.939, and changed the definition of employer to "a person or entity that employs fifteen or more employees and includes the state and its political subdivisions." In addition, this legislation prompted the Minnesota Supreme Court to vacate the petition it granted for review of a relevant case in the matter. The court of appeals case is *Hinrichs-Cady v. Hennepin County*, Minn. Ct. App., 4/20/20. The Minnesota Court of Appeals held in *Hinrichs-Cady v. City of Minneapolis* that employees who seek accommodations related to pregnancy and childbirth do not have to meet the 12-month tenure requirement that applies to employees who take pregnancy and parenting leave – cases.justia.com/minnesota/court-of-appeals/2020-a19-1561.pdf?ts=1587400374; the Supreme Court decision is at casetext.com/case/hinrichs-cady-v-hennepin-cty-1.

Eligible pregnant employees are entitled to three types of accommodations without having to provide documentation from a licensed health care provider or certified doula or otherwise prove the accommodation is necessary. An employer may not deny any of these automatic accommodations, nor claim they create an undue hardship:

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, with the advice of a licensed health care provider or certified doula, 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, 2021, through Aug. 31, 2022, DLI received three complaints related to the Pregnancy Accommodations law.

2022 DLI case example: A major retail store denied a pregnant employee's request to use a chair while working. DLI contacted the employer and explained M.S. § 181.9414, subd. 4, which requires employers to provide a pregnant employee with seating arrangements regardless of whether the employee provides a doctor's note or whether the accommodation is an undue hardship on the employer. The employer then approved the employee's accommodation request and confirmed with DLI that the employee would be able to sit while working for the remainder of the employee's pregnancy.

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, 2021, through Aug. 31, 2022, DLI received two complaints related to the Pregnancy and Parenting Leave law. Neither of these complaints resulted in DLI finding violations of 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 is prohibited from reducing an employee’s pay for time used to express milk. 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.

Effective Jan. 1, 2022, employers cannot reduce an employee’s compensation for time taken to express milk. However, this change in the law does not require employers to start paying for current unpaid break time used to express milk, such as a meal break.

From Sept. 1, 2021, through Aug. 31, 2022, DLI received 10 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.

2022 DLI case examples: Upon returning to work after being on parental leave, an employee of a pharmacy retailer called DLI to report she was only allowed to pump one time for 15 minutes during each of her six-hour shifts. DLI contacted the employer regarding the requirements under the Nursing Mothers law and received confirmation the employer would comply with the law at all of their Minnesota locations. DLI also confirmed via letter to the employee that her matter was satisfactorily resolved.

In another investigation, DLI was contacted by an employee who stated she was not receiving break times to express milk. The complainant informed DLI she was required to work while pumping. She attempted to resolve the issue with the employer on her own but contacted DLI after the employer was not cooperative. DLI reached out to the employer and was able to confirm it would comply with the law.

In yet another investigation this year, DLI investigated a complaint of an employee who was not provided a room in which to express milk. The situation caused the employee to resort to expressing milk in her car. The employer's initial solution was to provide space in the shower area of a bathroom. DLI contacted the employer and informed it of the requirement to provide a space shielded from view and free from intrusion that is not a bathroom. The employer sent an email message confirming it had come into compliance and included pictures of the space that was created.

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, 2021, through Aug. 31, 2022, DLI received two complaints alleging violations of the sick and safe leave law. Neither of these complaints resulted in DLI finding violations of the 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. The unit also engages in proactive outreach to educate employees and employers about their rights and responsibilities under these laws.

Labor Standards provides written information about WESA to employers and employees. DLI created a website about workplace rights and responsibilities for new parent workers and employers at dli.mn.gov/newparents. The landing page includes FAQs, information about the pregnancy accommodations and nursing mothers statutory changes of 2021, and videos and employee-oriented brochures in English, Hmong, Somali and Spanish. Labor Standards continues to publish a monthly email bulletin to help inform employers about the state’s minimum wage, overtime, tip, wage deduction, child labor and WESA requirements.

DLI continues to participate in outreach events to educate employers, associations, community-based organizations and worker advocates about WESA and how to contact DLI for information and assistance. From Sept. 1, 2021, through Aug. 31, 2022, DLI participated in 33 outreach events where it provided WESA information or training.

Finally, in addition to its ongoing efforts to raise awareness about WESA, DLI received \$84,000 in dedicated funding support from the state Legislature for fiscal-year 2022 to focus on WESA outreach and engagement activities. Support coincided with legislative changes that broadened employer requirements for lactating and pregnant employees.

DLI has implemented a WESA Outreach Plan to focus resources and raise awareness about the nursing mother and pregnancy accommodation protections. This plan included the following activities from September 2021 to August 2022.

- There were 33 events that included outreach about WESA (8,190 total participants at those events). Three of these events were specialized WESA webinars including DLI, the U.S. Department of Labor’s Wage and Hour Division and the Minnesota Department of Health that brought together health professionals, county health offices and related nonprofit organizations.
- DLI continued to publish and distribute multilingual (English, Hmong, Somali and Spanish) brochures for pregnant and new parents about their rights under WESA. Nearly 19,500 brochures were

distributed to 89 health care organizations, including 12,313 English, 3,853 Spanish, 2,362 Somali and 917 Hmong, for distribution to pregnant workers and new parents. Organizations included hospitals maternity areas, midwifery offices, OB/GYN clinics, WIC offices and county health departments located throughout the state, including Alexandria, Crosby, Fairmont, Grand Rapids, Kasson, Le Center, Marshall, Ortonville, Roseau and throughout the metro area.

- DLI published the pregnant workers and new parents' webpage May 3, 2021. From May 3, 2021, to August 31, 2022, DLI recorded 33,792 visits to the webpage.
- Informational videos were created in English, Hmong, Somali and Spanish about rights and responsibilities under WESA. The video was viewed approximately 700 times between September 2021 and August 2022.
- WESA outreach and engagement grants were issued to the Minnesota Breastfeeding Coalition (MBC) and the African American Babies Coalition (AABC), helping DLI to reach underrepresented and diverse communities across the state.
 - MBC's project created a 90-day challenge for local breastfeeding coalitions and other MBC partners to build resources, connect with local employers and organizations, promote workplace rights, increase awareness of WESA and share ideas with other participants. The project successfully engaged partner organizations statewide, including the distribution of 50 challenge kits, 12 new multilingual WESA videos and project recognition to the following groups for local actions to engage employers and employees in their communities:
 - Anoka County Breastfeeding Coalition;
 - Crow River Area Breastfeeding Coalition;
 - Isanti County Breastfeeding Coalition;
 - Northland Breastfeeding Coalition;
 - Olmsted County Breastfeeding Coalition;
 - Polk County Breastfeeding Coalition;
 - Quin County Breastfeeding Coalition; and
 - Washington County Breastfeeding Coalition.
 - AABC's grant project included:
 - creating a community guide and training about workplace rights under WESA, in consultation with partners and program engaged mothers;
 - hosting three mother and stakeholder events using the newly created guide;

- creating community specific written materials and videos to educate workers about their rights under WESA; and
 - producing and placing messaging on community radio stations about rights under WESA.
- DLI issued Wage and Hour Bulletin newsletters covering WESA in December 2021 (recent statutory changes) and March 2022 (sick and safe time provisions) to about 7,900 subscribers.
 - DLI has been running online ads about WESA on Facebook, Google and Twitter since 2021. From Sept. 1, 2021, to Aug. 31, 2022:
 - 1,880 people clicked on the Facebook ad; and
 - 1,964 people clicked on the Twitter ad.

From May 28, 2021, to Aug. 31, 2022:

- 37,835 people clicked on the Google ads

The department intends to continue social media and online messaging each month, outreach grants and brochure distribution as funding permits.

Information and frequently asked questions about WESA can be found on DLI’s website at dli.mn.gov/business/employment-practices/womens-economic-security-act-faqs and at dli.mn.gov/newparents.

DLI has developed a series of workplace fact sheets for employers and employees that are available online.

- Wage disclosure – dli.mn.gov/sites/default/files/pdf/wage_disclosure.pdf
- Pregnancy leave, pregnancy accommodations and nursing mothers – dli.mn.gov/sites/default/files/pdf/DLI_WESA_Brochure_English.pdf⁵
- Parenting leave – dli.mn.gov/sites/default/files/pdf/parental_leave.pdf
- Sick and safe leave – dli.mn.gov/sites/default/files/pdf/sick_leave.pdf

⁵ Brochure is also available in [Hmong](#), [Somali](#) and [Spanish](#)

DLI referrals

Minnesota Department of Employment and Economic Development

DLI refers questions related to workforce development to the Minnesota 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: parent, guardian or designee of a parent or guardian who lives with at least one minor; or a person who is pregnant or is in the process of securing legal custody of a minor.⁶

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 or duration of employment.

Minnesota Department of Health

DLI refers employers to MDH’s Breastfeeding Friendly Workplaces Program, a voluntary recognition program for workplaces that have demonstrated their commitment to supporting breastfeeding mothers by creating a workplace lactation support program (see health.state.mn.us/people/breastfeeding/recognition).

Conclusion

From July 2014 through August 2022, DLI completed 122 investigations of alleged violations of the five WESA provisions within its legal authority. Through continued outreach and engagement about WESA to employers

⁶Minnesota Statutes § 363A.03, subd. 18 (revisor.mn.gov/statutes/cite/363A.03).

and workers, DLI is committed to raising awareness and helping employers remain or come into compliance with these important workplace protections.