

Women's Economic Security Act Annual Report

Minnesota Department of Labor and Industry

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443 Lafayette Road N.
St. Paul, MN 55155

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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 Act (Minnesota Statutes § 181.172);
2. Pregnancy Accommodation (M.S. § 181.9414);
3. Pregnancy and Parental Leave (M.S. § 181.941);
4. Nursing Mothers’ Accommodations (M.S. § 181.939); and
5. Sick Leave Benefits; Care of Relatives (M.S. § 181.9413).

DLI has enforced employee rights under WESA through investigations of employee complaints, on-site visits to employer establishments and employer/employee outreach about the related rights and responsibilities.

This report provides DLI investigative data and outcomes related to its enforcement of WESA since the law’s inception in the summer of 2014.

DLI WESA investigative summary

DLI WESA investigations Annual: Sept. 1, 2015, to Aug. 31, 2016

| Complaint type | Complaints | Complaints | Violations |
|--|------------|------------|------------|
| | filed | closed | found |
| Wage Disclosure Protection | 5 | 5 | 3 |
| Pregnancy Accommodation | 5 | 3 | 1 |
| Pregnancy and Parental Leave | 6 | 4 | 0 |
| Nursing Mothers | 3 | 3 | 2 |
| Sick Leave Benefits; Care of Relatives | 1 | 1 | 0 |
| Total | 20 | 16 | 6 |

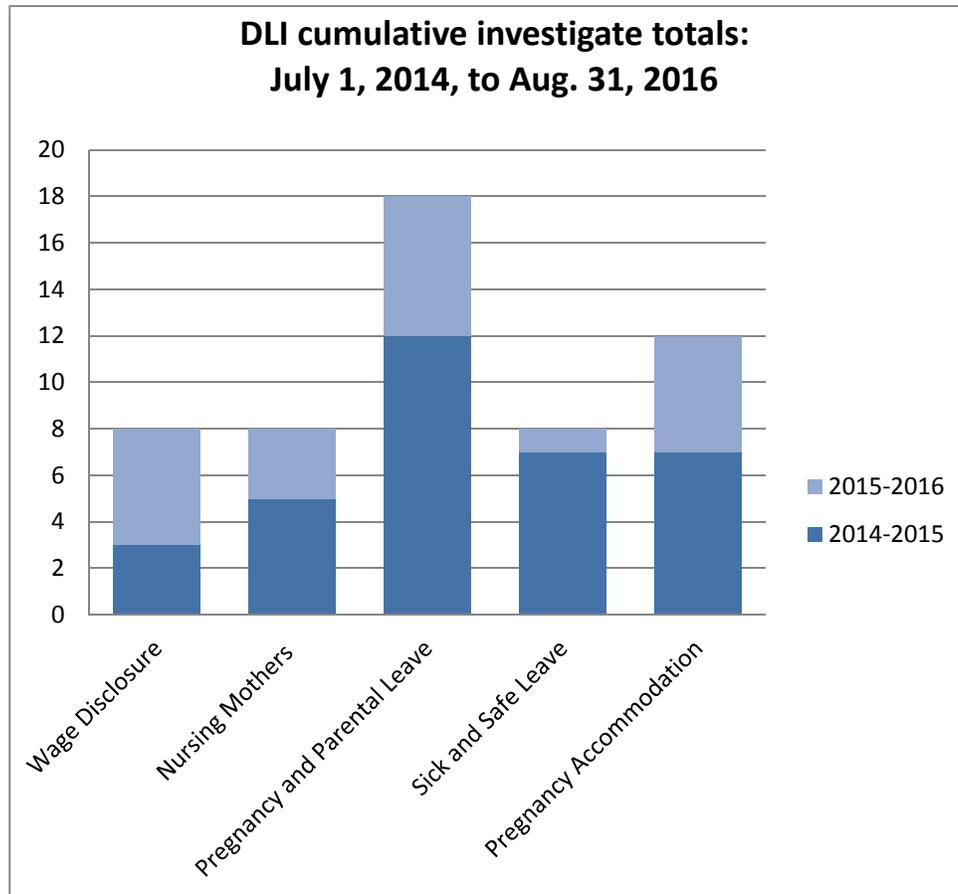
DLI WESA investigations Cumulative: July 1, 2014, to Aug. 31, 2016

| Complaint type | Complaints | Complaints | Violations |
|--|------------|------------|------------|
| | filed | closed | found |
| Wage Disclosure Protection | 8 | 8 | 5 |
| Pregnancy Accommodation | 12 | 10 | 3 |
| Pregnancy and Parental Leave | 18 | 16 | 0 |
| Nursing Mothers | 8 | 8 | 7 |
| Sick Leave Benefits; Care of Relatives | 8 | 8 | 0 |
| Total | 54 | 50 | 15 |

DLI cumulative WESA investigative summary

July 1, 2014, to Aug. 31, 2016

The chart below shows the total number of complaints taken for each type of WESA investigation. The dark blue portion (bottom) indicates cases taken from July 1, 2014, through Aug. 31, 2015. The light blue portion (top) indicates cases taken from Sept. 1, 2015, through Aug. 31, 2016.



Outreach and referrals

As part of its WESA Initiative, DLI has conducted numerous outreach events and has developed referral relationships with other state agencies affected by the enactment of WESA. Most importantly, DLI and the Minnesota Department of Human Rights (MDHR) have conducted cross training with each department's respective investigative teams to ensure complainants who contact either agency are appropriately referred. DLI now suggests complainants with issues related to pregnancy accommodation also contact MDHR and vice versa.

Introduction

The Women's Economic Security Act (WESA) became the law in Minnesota on Mother's Day in 2014.¹ It is a combination of 14 provisions designed to address gender equity, address gender pay gaps, 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 Act (Minnesota Statutes § 181.172);
2. Pregnancy Accommodation (M.S. § 181.9414);
3. Pregnancy and Parental Leave (M.S. § 181.941);
4. Nursing Mothers' Accommodations (M.S. § 181.939); 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. Finally, M.S. § 181.944 gives workers the right to sue their employer in district court for violations of WESA.

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).

DLI enforcement

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

The Wage Disclosure Protection Act 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 the 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.

DLI case example: DLI received a photograph of an employee timeclock located at a sports bar in Blue Earth, Minnesota. Below the timeclock was a sign that stated: "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 timeclock sign, rewrite its employee handbook and implement a new wage disclosure policy consistent with the law.

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 1-800-342-5354.*²

DLI reviews employee handbooks during all Labor Standards investigations to determine compliance with the wage disclosure law. From January 2016 through August 2016, DLI has closed 59 audits, reviewing each one for compliance with the wage disclosure law.

From Sept. 1, 2015, to Aug. 31, 2016, DLI received five formal complaints related to the Wage Disclosure Protection Act. All cases are closed, resulting in employers incorporating information about wage disclosure protections in their company handbooks and ceasing the practice of telling employees they cannot disclose their wages.

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

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

The Pregnancy Accommodation Act requires that employers provide reasonable accommodation to employees with health conditions related to pregnancy or childbirth.

Eligibility for pregnancy accommodation 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.

However, 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 a note 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 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, 2015, to Aug. 31, 2016, DLI received five formal complaints related to the Pregnancy Accommodation Act. One of these cases closed because the employee was not covered under the law because the small retail employer did not employ 21 or more employees at one site in Minnesota. Another two complaints (one against a hospital, the other against a nonprofit organization) were resolved after the investigator contacted the employer and informed them of their obligations under the law. The remaining two investigations are still open.

DLI case example: A nursing home employee was nine weeks pregnant with twins. She worked as a certified nursing assistant and was often responsible for lifting patients. Her doctor set restrictions not to lift more than 20 pounds. When the employee presented this information to her supervisor, she was told, "There is the door – you can leave if you cannot do your job." DLI demanded information from the employer about the pregnancy accommodations given to the employee. Upon the employer's receipt of the demand, the employee began light duty the very next day. The employer also made updates to its employee handbook with regard to all WESA laws.

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

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

Eligibility for pregnancy and parental leave is the same as the pregnancy accommodation eligibility requirements. Employers are required to comply with this law if they employ 21 or more employees at one site. Employees are protected by this law if they worked for that employer for at least 12 months and have worked for at least half-time during the previous 12 months.

DLI case example: A manager at a check-cashing company alleged she was demoted due to her pregnancy and then terminated while on parental leave. She was unsure at the time of filing a complaint about how large the employer was or whether the employer had 21 employees at any one site in Minnesota. DLI determined the employer did not have the requisite number of employees to apply the WESA Pregnancy and Parental Leave protections. The employee was referred to the Minnesota Department of Human Rights to identify possible sex or pregnancy discrimination.

From Sept. 1, 2015, to Aug. 31, 2016, DLI received six formal complaints related to the Pregnancy and Parental Leave law. Four cases have been closed. In three of the closed cases, DLI determined the employer was not large enough for the employee to be covered by the WESA protections. These employers were a marketing firm, a financial services organization and a dental office. In the fourth closed case, DLI lost contact with the complainant and the case was closed due to insufficient evidence. Two cases opened during this time period remain open.

IV. Nursing Mothers' Accommodations (M.S. § 181.939)

The Nursing Mothers' Accommodations 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.

DLI case example: DLI received information regarding an online retailer of television parts that was not allowing a nursing employee to take an additional five minutes of her break time to express milk. The investigator conducted an on-site visit to the employer four days after the complaint was filed. The investigator evaluated the space for nursing mothers and found it to be in compliance with the law. The employer informed the investigator the nursing mother had been given extra time to express milk as requested. No violation of the Nursing Mothers' Accommodations law was found.

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 case example: An employee of a dry cleaner called DLI to file a complaint because her employer had not provided adequate space for a nursing mother to express milk. The caller stated the only options were the bathroom or an area that did not have a door. The investigator contacted the employer the same day to discuss the matter. The employer indicated it was willing to put up a room divider or sheet and a sign to prevent intrusion by coworkers. The nursing employee quit the same day the complaint was received. Both the employer and employee were informed about the obligations under the nursing mother's law.

DLI must conduct an expedited investigation of nursing mother accommodation complaints. DLI is required to contact the employer within two business days and investigate the complaint within 10 days. Therefore, DLI:

- contacts the employer the same day it receives the complaint;
- schedules an on-site visit or requires information be submitted within five days; and
- gains compliance or issues an Order to Comply within 10 days.

DLI case example: An employee at a sandwich shop filed a complaint because the only space available for her to express milk was an open area behind the register where food was kept. DLI contacted the employer immediately and set a time for an on-site visit. By the time the investigator arrived at the store, the store manager had brought in a temporary room divider and placed it in a nook in the back of the store. The manager had also alerted other employees they were not to go back there when the divider was up. The employee was satisfied and felt she had adequate space and privacy to express her milk.

From Sept. 1, 2015, to Aug. 31, 2016, DLI received three formal complaints related to the Nursing Mothers' Accommodations law. All of these cases have been closed. Each case was investigated within 10 days of receipt and all employers were either found to be in compliance with the statute or were brought into compliance within that timeframe.

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.

From Sept. 1, 2015, to Aug. 31, 2016, DLI received one formal complaint related to the Sick and Safe Leave law. The employer sought and was granted an injunction by the federal district court that prevented DLI from being able to enforce the Sick and Safe Leave law in this case.

DLI case example: Several employees of a union contacted DLI after they were refused the ability to use their sick leave to care for sick relatives. These employees all had 25 or more years of working with their employer and, under the terms of their collective bargaining agreement, were entitled to "unlimited" sick leave. Employees with fewer than 25 years of work were allowed to use their sick leave to care for sick relatives. An investigation was conducted and an order issued to the employer demanding it allow staff members with 25 or more years of experience to use their sick leave to care for sick relatives. The employer brought a lawsuit against DLI in federal court seeking an injunction to prevent DLI from enforcing the law. The judge ruled that, in this case, the Minnesota law was pre-empted by Section 301 of the Labor Management Relations Act.

DLI outreach

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

From September 2015 through August 2016, DLI participated in more than 50 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/LS/FaqWesa.asp.

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

- Wage disclosure: www.dli.mn.gov/LS/Pdf/wage_disclosure.pdf
- Pregnancy leave, pregnancy accommodations and nursing mothers: www.dli.mn.gov/LS/Pdf/pregnancy_nursing.pdf
- Parental leave: www.dli.mn.gov/LS/Pdf/parental_leave.pdf
- Sick and safe leave: www.dli.mn.gov/LS/Pdf/sick_leave.pdf

DLI referrals

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

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

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

Referrals to the Minnesota Department of Human Rights (MDHR)

DLI refers questions related to equal pay certificates to 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 also 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 or amount of service to the employer.

DLI does not currently have a system to track the number of referrals to MDHR. However, any time there is a pregnancy accommodation complaint made to DLI, the complainant is also encouraged to call MDHR to make a sex discrimination complaint. This has occurred 12 times since July 1, 2014.

³ See, M.S. § 363A.03, subd. 18 at www.revisor.mn.gov/statutes/?id=363A.03.

Conclusion

From July 1, 2014, to Aug. 31, 2016, DLI completed 50 investigations of alleged violations of the five WESA provisions within its legal authority. During this period it was found that employers often were not aware of their responsibilities related to WESA. Upon learning of their responsibilities through DLI's investigative efforts, employers typically came into compliance willingly and expeditiously.

Further outreach is recommended to better inform employers about their obligations under WESA. DLI continues to provide both employers and employees with guidance about these laws through various outreach activities. First, the department has published several informative fact sheets related to WESA provisions on its website. Second, DLI posts responses to frequently asked questions on its website to further assist the public with some of the common WESA questions the department fields. Third, DLI issues a monthly employer e-bulletin to inform stakeholders about matters related to state labor standards, including WESA. Finally, DLI participates in outreach events engaging employers, community-based organizations and worker advocates to inform groups about this law.