

Minnesota

● ● ● **Labor Standards** ● ● ●

Division



MINNESOTA DEPARTMENT OF
LABOR & INDUSTRY

An introduction to **Minnesota's Women's Economic Security Act**

Construction Conference
February 18, 2016

Background

- Governor Mark Dayton signed WESA into law on Mother's Day, May 11, 2014. WESA amended several portions of Minnesota laws, including Minn. Stat. 363A, the Minnesota Human Rights Act (MHRA) and Minn. Stat. 181, Minnesota's general employment law.

Women's Economic Security Act (WESA)



Overview

- Wage Disclosure Protection
- Nursing Mothers
- Pregnancy & Parental Leave
- Sick / Safe Leave
- Pregnancy Accommodation
- Areas not affecting Labor Standards Unit

What is WESA?

- Covers many issues involving women's rights in the workplace
- Enacted in Spring of 2014
- Makes changes to Labor Standards laws
- New DLI investigative authority
- New DLI enforcement authority

Right to Sue (M.S. 181.944)

Individuals can sue their employer for violations of:

- **Parenting Leave**
- **School Conference and Activities Leave**
- **Sick Leave Benefits; Care of Relatives**

Beginning July 1, 2014

Employees can **also** sue their employer for violations of:

- **Nursing Mothers law**
- **Wage Disclosure law**



Wage Disclosure Protection (M.S. 181.172)



New statute under Chapter 181

Employers cannot:

- require employees not to disclose their wages
- take adverse action against an employee who discloses their wages.

Employees are not:

- required to disclose wages or
- allowed to disclose other employer information, such as trade secrets.

Wage Disclosure Protection (M.S. 181.172)

DLI Case Example:

Employee filed a complaint stating employer was threatening to terminate employees who discussed their wages. DLI contacted employer and informed them that their practices were in violation of Wage Disclosure laws. An audit was conducted and revealed that Complainant was earning below what other similarly situated employees were making. Employer paid back wages and created a Wage Disclosure policy they now include in their employee handbook.

Nursing Mothers (M.S. 181.939)



Employers (employing at least **one** person) must:

- Provide reasonable unpaid break time for nursing mothers to express milk
- Provide space other than a bathroom that is shielded from view and free from intrusion and includes access to an electrical outlet

Nursing Mothers exceptions

- Break time not required if it “**unduly disrupts**” the employer’s operation.
- An employer only must make “**reasonable effort**” to provide a place for the employee to express milk.
- An employer may not retaliate against an employee for asserting rights under this law

Investigating Nursing Mothers Complaints



DLI is required to contact the employer within **2 business days** and investigate the complaint within **10 days**.

DLI will investigate and determine whether:

- creating a nursing space is unreasonable or
- allowing break time for nursing is “unduly disruptive”
- employer has retaliated against the employee.

Nursing Mothers (M.S. 181.939)

DLI Hypotehtical:

An employee on a construction site is a nursing mother and needs a space and time to pump while at work. The employer wants her to use a portable toilet to pump and doesn't want her to take more than 15 minutes every 4 hours to pump.

Nursing Mothers (M.S. 181.939)

DLI Hypotehtical:

The employer is required to provide a space other than a bathroom (or toilet stall) for a nursing mother to express milk. In this scenario, DLI contacted the employer and worked with them to find a suitable solution. The employer created a screened of space in its construction trailer for the woman to pump. A sign was put up not to enter while she was pumping. It had an electrical outlet as well. DLI worked with the employer and employee to help determine the amount of time she needed and what amount of time would not unduly disrupt the business.

Pregnancy & Parental Leave (M.S. 181.940 - .944)

Definitions

“Employee”

- performs services for hire
- for at least 12 months preceding the request
- at least half-time during the 12 months immediately preceding the leave.
- excludes independent contractors

Pregnancy & Parental Leave (cont.)

Definitions

“Employer”

- 21 or more employees
- at one site in Minnesota
- Includes individuals, corporations, partnerships, associations, nonprofit organizations and governmental subdivisions.

Pregnancy & Parental Leave (M.S. 181.940 - .944)

- WESA expands leave from 6 weeks to **12 weeks** (same as federal law)
- Includes leave for prenatal care, incapacity due to pregnancy, childbirth, or related health conditions
- Expands start of leave from within 6 weeks to within 12 months of the birth or adoption of the child
- Employer cannot retaliate against employee for requesting or taking leave under this statute

Pregnancy & Parental Leave (M.S. 181.940 - .944)



Additional requirements:

- Employer must continue employee insurance, but is not required to pay cost of the insurance while employee is on leave
- Leave runs concurrent to other paid leave offered by the employer, and any leave taken under Federal FMLA law.

Pregnancy & Parental Leave (M.S. 181.940 - .944)

DLI Hypotehtical:

An employee working for a contractor had to take a total of four weeks off for medical appointments and sick leave related to her pregnancy. A month before her due date, she tells her boss that she would like to take eight weeks of maternity leave. Her employer is visibly upset because she had already taken three weeks off in the fall due to her back injury and believes she shouldn't be entitled to so much time off.

Pregnancy & Parental Leave (M.S. 181.940 - .944)

DLI Hypotehtical (con't):

FMLA leave runs concurrent to MN Pregnancy and Parental Leave. However, if an employee takes FMLA leave for unrelated reasons, they still still be entitled to 12 weeks of leave for pregnancy related illness and parental leave. This employee is entitled to 8 weeks of parental leave.

Sick / Safe Leave (M.S. 181.9413)

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- Employer must:
 - allow use of sick leave benefit for leave for absence due to illness or injury of a relative
 - allow for a reasonable period of time as the employee's attendance may be necessary.

“Reasonableness” will be evaluated and determined on a case-by-case basis

Sick / Safe Leave

Leave can be used to care for an employee's

- child
- adult child
- spouse
- sibling
- parent
- **mother-in-law**
- **father-in-law**
- **grandchild** (*including step-grandchild, biological, adopted and foster grandchildren*)
- grandparent
- step parent

Sick / Safe Leave (M.S. 181.9413)

Safe Leave

- Employees can also use sick leave benefits (up to 160 hours) to obtain assistance for themselves or their relatives because of sexual assault, domestic abuse or stalking.

There is an anti-retaliation provision added to this law.

Pregnancy Accommodation (M.S. 181.9414)



- Employers must provide reasonable accommodation to employees with health conditions related to pregnancy or childbirth.
- These are considered reasonable:
 - More frequent restroom, food and water breaks
 - Seating
 - Limits on lifting over 20 pounds.
- Additional accommodations may be deemed reasonable, including:
 - Temporary transfer to less strenuous position

Pregnancy Accommodation (M.S. 181.9414)

- Employer may deny accommodation if they can show an undue hardship
- Does not diminish other laws that protect women against sex or pregnancy discrimination or diminish coverage of pregnancy, childbirth, or related health conditions
- The employer cannot require an employee to take leave or accept pregnancy accommodations.
- Contains an anti-retaliation provision

Pregnancy Accommodation (M.S. 181.9414)

DLI Hypothetical:

A pregnant employee requested a stool while she did her work. Her employer said that it was a “tripping hazard” to have the stool on site. The employee contacted us and we were able to get the employer into compliance with the law by providing the worker with the option to sit while working. This same employer reduced the employee’s hours from 10 to 8 because of the pregnancy. The employee didn’t ask for or want a reduction in hours as an accommodation, so we were able to get her employer to return her to a 10 hour schedule.



Minnesota Department of
HUMAN RIGHTS

WESA AND THE MINNESOTA HUMAN RIGHTS ACT

Minnesota Department of Human Rights

MDHR Overview

- The Minnesota Department of Human Rights (MDHR) is charged with the responsibility of eliminating unlawful discrimination in the workplace under the MHRA. Approximately 60% of the charges filed with MDHR in 2015 concerned employment discrimination.
- The four most common employment discrimination charges in 2015 were: disability (30%), race (20%) sex (16%) and age (16%).

MDHR Overview

- MDHR has also long been charged with the responsibility of ensuring that certain businesses that contract with the state implement good faith efforts to employ minorities, women, and individuals with disabilities.
- MDHR requires that these businesses obtain a workforce certificate from the MDHR Commissioner prior to executing a contract with the state.

WESA – Overview of Changes to MHRA

- Familial status was added as a protected class in the area of employment
- Pregnancy accommodation protections added to DLI; ***DLI & MDHR now both have overlapping oversight over pregnancy accommodation issues***
- Equal Pay Certificate required for certain state contractors

Familial Status

The section of the MHRA prohibiting employment discrimination, Minn. Stat. §363A.08, was amended to include “familial status” as a protected class. Familial status under the MHRA provides protection for a:

- Parent, guardian or designee of a parent or guardian that lives with at least one minor; or
- Person who is pregnant or is in the process of securing legal custody of a minor

Familial Status

- Employee “means an individual who is employed by an employer and who resides or works in this state.”
 - Includes “a commission salesperson, as defined in section 181.145, who resides or works in this state.” See, Minn. Stat. §363A.03, Subd. 15.
- Employer includes all employers that have “one or more employees.” See, Minn. Stat. §363A.03, Subd. 16.

WESA Pregnancy Accommodation, Minn. Stat. 181

WESA created the right to a private cause of action for injunctive relief, damages and attorney fees, Minn. Stat. §181.944, for employees against their employer for violations of the following new or amended provisions of Minnesota law:

- Nursing mothers, Minn. Stat. §181.939
- Pregnancy accommodations, Minn. Stat. §181.9414
- Pregnancy and Parental leave, Minn. Stat. §181.941

WESA Pregnancy Accommodation Addition to Minn. Stat. 181

- The new provisions in Minn. Stat. 181 added to the **continued protections** for women under the MHRA.
- Minn. Stat. 181.9414, Subd. 2 clarifies that the new accommodation protections “*shall not be construed to affect any other provision of law relating to sex discrimination or pregnancy, or in any way to diminish coverage of . . . any other law.*”

MDHR Pregnancy Discrimination Landscape

- Sex (1+ employee)
- Familial Status (1+ employee)
- Disability (15+ employees)

Sex Discrimination

- MHRA prohibits employers from discriminating against women on the basis of their gender and on the basis of their ability to become pregnant. Minnesota courts have interpreted the MHRA consistently with Title VII and the Pregnancy Discrimination Act.
- On June 25, 2015, the EEOC updated its guidance to employers entitled “Pregnancy Discrimination and Related Issues.”

Sex Discrimination

An employer can violate the law under the MHRA or Title VII, on the basis of an individual's capacity to become pregnant/sex/familial status, when it:

1. Takes adverse action against the individual,
2. Treats the individual differently than individuals similar in ability or inability to work,
3. Harasses or creates a hostile environment for the individual,
4. Utilizes a policy that has a disparate impact on such individuals, or
5. Denies the individual a right under the law.

Disability Discrimination

- MHRA also prohibits discrimination against employees who are, have a record of, or are regarded as having a disabling impairment.
- Employers with more than 15 employees are required to accommodate an employee who has a pregnancy-related impairment that rises to the level of a disability unless the accommodation imposes an undue hardship on the employer. See, Minn. Stat. 363A.08, Subd. 6.

Enforcement Issues - DLI v. MDHR

	DLI	MDHR
Employer Size	21+ employees	Sex & Familial Status (1+ employee); Disability accommodation (15+ employees)
Employee Tenure	12 months	n/a
Statute of Limitation	2 years	1 year
Reprisal/Retaliation	pregnant employee	any individual involved (i.e. reporting witness/supporter)
Remedies	injunctive relief; penalty; individual remedies only in court action	individual remedies for compensatory, punitive, & mental anguish damages, attorney's fees, injunctive relief; penalty

MDHR Partnership with DLI

- The Minnesota Department of Labor and Industry (DLI) and MDHR are working together to ensure that all provisions of WESA that concern protections afforded to pregnant workers, nursing mothers, and workers that seek pregnancy and parental leave are enforced.

MDHR Collaboration with EEOC

MDHR is also partnering with the EEOC on the EEOC's following strategic enforcement initiatives:

1. Eliminate recruiting and hiring barriers
2. Protect vulnerable workers
3. Enforce equal pay laws
4. Ensure pregnancy accommodations are provided

Equal Pay Certificate - Background

- Since 1969, the Minnesota Human Rights Act (the Act) has afforded protection for women from being paid less than men absent a legitimate, non-discriminatory reason.
- Nonetheless, pay disparities continue to persist at a systematic level where women make an average of 80 cents to the dollar paid to men.

Equal Pay Certificate - Background

- The WESA amendments to the MHRA require certain state contractors to secure an Equal Pay Certificate as of August 1, 2014.
- The requirement for the new Equal Pay Certificate can be found in the Minnesota Human Rights Act at Minn. Stat. §363A.44

Equal Pay Certificate Application

The Equal Pay Certificate law requires businesses with 40 or more employees, seeking state contracts of over \$500,000 to certify:

- Compliance with Title VII of the Civil Rights Act of 1964, the Equal Pay Act of 1963, the MN Human Rights Act, and the MN Equal Pay for Equal Work Law;
- The average compensation for the company's female employees is not consistently below the average compensation for male employees within each of the major categories in the EEO-1 report;
- Making hiring, retention and promotion decisions regardless of gender;
- Promptly correct wage and benefit disparities;
- Evaluate wages and benefits to ensure compliance

Equal Pay Certificate

- The contractor's certification doesn't *establish* it is actually in compliance with the applicable equal pay laws. See, Minn. Stat. 363A.44, Subd. 2(c).
- MDHR may audit the contractor to evaluate its efforts to comply with the applicable laws. See, Minn. Stat. 363A.44, Subd. 8.

What Contracting Entities are Covered

- State of Minnesota Departments and Agencies
- Metropolitan Council
- Metropolitan Airports Commission
- Minnesota Sports Facilities Authority
- Metropolitan Mosquito Control District



Obtaining an Equal Pay Certificate

Contractors must submit:

- The \$150 application fee
- A statement of equal pay compliance signed by the organization's Chief Executive Officer or Chairperson of the Board.



Common Questions on the New Law

The following slides include some of the most common questions concerning the new law.



Does the Department have a sample equal-pay compliance statement that contractors can use?

Yes. The Department has an [equal pay certificate application form](#) that contractors can submit as part of their application for an Equal Pay Certificate.



Does a business located in a state other than Minnesota need to have an Equal Pay Certificate?

- The business must obtain an Equal Pay Certificate from the Department if the business employs:
 - More than 40 employees either in Minnesota or the state of primary place of business, and
 - The contract is \$500,000 or more.

Our business has 55 full-time employees, 30 employees in North Dakota and 25 employees in Minnesota. Do we need to obtain an Equal Pay Certificate?

- No. The business does not employ more than 40 full-time employees in Minnesota or where it has its primary place of business.



How often do I need to renew my Equal Pay Certificate?

- Equal Pay Certificates, similar to Workforce Certificates, are good for 4 years.



Do I need a Certificate of Equal Pay for each contract I am awarded?

- No. Similar to a driver's license, a company needs only one Certificate of Equal Pay, renewed every four years, for all contracts it is awarded from the state.

Can we have our Director of Human Resources sign our equal pay compliance statement?

- No. The equal pay compliance statement must be signed by the Chief Executive Officer or Chairperson of the Board as specifically required by the statute.



Contact the Minnesota Department of Human Rights

For more information, visit
www.mn.gov/mdhr or call:

612.539.1118

651.296.1283 TTY

800.657.3704