SCOTT COUNTY ADMINISTRATION

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William Moore
Minnesota Office of Administrative Hearings
600 North Robert St. P.O. Box 64620
St. Paul, MN 55164-0620

Submitted via OAH Rulemaking eComments Website

RE: Comments on Proposed Rules Governing Minnesota Family and Medical Benefit Insurance Program, *Minnesota Rules*, Chapter 3317; Revisor's ID Number R-4846

Dear Mr. Moore,

Thank you for the opportunity to review and comment on the draft rules regarding the Minnesota Paid Leave Program. First and foremost, Scott County supports strong paid leave programs for employees. We have negotiated and worked with our employees and their labor union representatives to develop a paid leave program that includes paid time off, short-term leave, long-term leave, sick and vacation time that all meet current federal and state requirements. We pride ourselves on being an employer of choice, supporting, encouraging, and engaging employees through focused employee investments and workplace programs and offerings that promote and foster individual and organizational well-being, the net result of which is public service excellence. Supporting employees via paid leave programs to ensure they can meet their personal and family needs is an essential part of our philosophy.

While we recognize and appreciate the Department of Employment and Economic Development's (DEED) work to implement a new state program effectively, Scott County wants to emphasize strong concerns regarding the administration and impacts of the program. Like other parties involved in this program, we do not want overly complicated, confusing, burdensome, and punitive processes; however, those qualities already exist and accurately describe the draft rules. Employers must be able to implement the rules and regulations through already existing pay systems and leave time processes. In the draft rules, carefully crafted and negotiated leave for public sector employers is displaced by rules and regulations that remain in flux. We support having a strong, employee- and employer-friendly paid leave program, and we believe more time is needed to allow employers to be accountable to still-developing administrative rules.

Our concerns are grounded in two areas:

- From the perspective of an employer mandated to administer this program, there are too many unknows among the draft rules for the program to be launched successfully by 1/1/26.

- The one-size-fits-all approach is burdensome, unclear, and must remain optional so employers have latitude.

Employer Administration

- We have concerns about our ability to administer this program and the people power required to do so.
- The draft rules remain vague and idealistic, and they do not reflect the real employer impacts that will arise in the administration of this program.
- The seven-calendar-day turnaround for employers to respond to inquiries is not realistic.
- How will approval for paid leave be known timely, and how will we be able to reduce pay and appropriately supplement in such a short period of time? Employers need time to plan. We have significant concerns about retro paychecks and what that will do to payroll systems and payroll and tax records.
- We need an employer dashboard or some other interface with DEED so employers are able to know sooner than later if an employee is qualified.
- The draft rules clarify that employers can request exemption from the state plan but do not say *how*.
- DEED needs to allow employers ample time to respond to exemption options.

Burdensome One-Size-Fits-All Approach and Lack of Clarity

- **Line 1.5** – The term benefit *insurance* program is odd. This is not insurance. Why not *paid leave benefit* program?
- **Lines 3.8 to 3.25** – Notice to the employer is critical to business operations. Planning for how to address the needs related to leaves is possible and should be the expectation. The flow of timely communication with time to respond—as opposed to being simply left to react—will be critical for employers.
    - **Line 3.8 3317.4100** – This section should be preserved as written in the bill and draft rules. The key to all of this working is advanced planning for leaves of absence. Advanced planning should be the expectation of this paid leave program unless it is an emergency situation. Ongoing disruption from unplanned leave is not good for anyone and is not sustainable for productive business environments.
- **Lines 4.1 to 4.4** – The application should be delayed if employee failed notice. This supports shared accountability for the needs of individuals and business.
- **Lines 4.13 to 4.17** – This section **must be preserved** as a choice point for employers. It is this part and the integration of carefully negotiated and crafted leave that is burdensome and unclear to employers. This is the critical piece that was missed in writing the legislation. A lack of understanding about the current state across employers, their programs and real discussion about how to merge new and existing leave programs has caused unintended confusion and consequences. This section should be optional so employers have latitude to maneuver. **It cannot be a one-size fits all**.
    - **Line 4.13 3317.4200** – Note #3: Supplemental benefits are going to be excessively burdensome to administer for employers. Changing leave situations on an individual basis cannot be managed on an individual basis. There must be latitude for rules and shaping around the use of other leaves. Just as the State needs

Administrative Rule authority to shape the program, so too do employers when it comes to making this work with existing time off and HRIS system functionality.

- **Line 4.18 3317.4300** – This one-sided language leans toward "shall/must" for employers and "may" for workers. All parties should want and expect that fraud will be harshly and readily dealt with to maintain integrity of the program. Those paying should be enabled to trust that the money is going to people using it for the reasons articulated and outline.
- **Line 5.22 3317.4600** – This section should remain as written in draft rules. "The provisions were heavily negotiated…" is a one-sided statement in that Employers do not believe they were seated at the negotiating table. The table did not have a balanced view of the needs of employers and workers. Shared accountability is the only way a program like this will be sustainable. Employers need notice and an ability to plan for both employees being gone and employees coming back. 30 days is a reasonable period of time for notice of a long-term leave. 14 days is a reasonable period of notice for a change and/or for a return to work early.
- **Line 5.1 3317.4310** – The suspending payments section should not be changed per the letter. The draft rule language is fitting and reasonable. This letter makes the expectation of integrity too ambiguous. Honor and honesty should be our expectation for those using public dollars.
- **Lines 6.13 to 6.15** – One-day notice is not enough time for a change to the leave. 14-day notice is reasonable with the ability of the employer to waive that time if agreed to by the employee and employer.
- **Lines 11.4 to 11.15** – There is no resolution for the employer in this process. We can file disputes and yet there is no clarity here regarding what will actually happen. The need for employers to ensure people are at work is as important as individual need for leave. How, exactly, will those needs be balanced?
- **268B.01, Subd.5 - Seasonal employment** – This carve out should be expanded to all seasonal business staff like golf courses, swimming pool operations, and ice rinks. This section has limited clarity. A seasonal employee is defined in Minnesota law as an employee who is appointed for no more than ten months during any 12 consecutive months but who is expected to return to work year after year. The definition here should follow other areas of the law regarding seasonal business and employee definitions.
- **268B.02, Subd. 5&6** – These exemptions are imprudent. If there is wrong-doing and/or irresponsibility with public resources, people should be held accountable. The program implementation should be timed to do things correctly. Waiving standard rules and oversights does not make for public service excellence. Accountability and sound fiscal practices are paramount. The State should be expected to assure the integrity of the program and address how fraud is being prevented.
- **268B.10, Subd. 21(b) and 268B.13Subd. 7&9** – There is a lack of clarity here. If a private plan defaults, individuals get absorbed into the State program. How does the plan stay whole? It seems that rule-followers will supplement non-rule followers and end up paying more. That should not be acceptable.
- **268B.145 Subd.6 –** The process for handling errors is unclear. Errors need to be corrected. "Errors must not be corrected retroactively" is language that does not make sense.
- **268B.17 & 18** – 7.5% of annual benefit payments is excessive for admin costs and outreach. The program should be right-sized across all elements of itself to **never exceed**

1.2% of payroll. All elements of cost and benefit should be right-sized and changed to fit within the footprint originally established.

- **<u>268B.185 Subd. 6&7</u>** – Rules on applicants who get overpaid seem to go away whereas Employer penalties (e.g. 268.19 are written definitive and punitively). Subd. 6 and 7 are burdensome to a tax-paying public as they speak to an unwillingness to hold people accountable when using other people's money. This is a public account, and the use of funds should be managed true to principles of sound fiscal and public accountability. If overpaid, the money should be a debt owed and not a discretionary act for the Commissioner to waiver.

We believe that the draft rules define a program that is well-intentioned but not ready for implementation. Beyond the benefitting employee, other employees, the employer, and taxpayer pieces in this equation are at a minimum understated and at a maximum completely unrecognized. This program is neither free nor an entitlement; it is a cost of living and a cost of doing business issue that will impact the employers across all sectors and, ultimately, the business climate of the State. This is why the program needs to be constructed and implemented appropriately.

We appreciate the opportunity to submit these comments, and we hope you will give them consideration in your efforts to ensure that the Minnesota Paid Leave Program is implemented effectively and clearly for employers and employees alike.

Respectfully,

Lezlie Vermillion
Scott County Administrator