Resolution # 31

2025 Delegate Assembly
Proposed Legislative Resolution

TITLE OF RESOLUTION: Paid Leave – Allow Opt-Out or 50/50 Employer Contribution

SUBMITTED BY: Inver Grove Heights Community Schools, ISD 199, Elizabeth (Liz) Niemioja, Board member; Hastings Public Schools, ISD 200, Carrie Tate, Board Member

RECOMMENDATION: Passage

BE IT RESOLVED, THAT MSBA URGES THE LEGISLATURE TO allow public school district employers and district collective bargaining units the ability to opt out of MN Paid Leave or, if not able to bargain an opt out agreement, a 50/50 employer/employee contribution shall be implemented.

DESCRIBE THE PROBLEM:
Failing to fix the employer/employee contribution can result in difficult negotiations. Additionally, the expense of Paid Leave may not serve the employees of some school districts as well as other bargained-for benefits; this should be determined locally.

EXPLAIN WHY THIS IS A PROBLEM:
Unclear rates make for complex negotiations, and an inability to opt-out (or be exempt and potentially optin) forces districts to adhere to benefits that ultimately may not be in the best interest of district employees. A fixed employer/employee contribution rate of 50% simplifies payroll and administrative processes, and reduces the burden of negotiating rates across different bargaining units. Beyond a fixed contribution, every school district and union has unique needs. Allowing public school employers and unions to opt out of MN Paid Leave, similar to the waiver option granted to construction and labor unions under ESST (or simply excluding employers in the public sector and giving them the option to opt in as in states such as Massachusetts), creates the strongest contract terms and benefits for staff, and prioritizes the needs of district staff at the local level.

BACKGROUND PROVIDED BY SCHOOL DISTRICT:
References Minnesota Paid Leave
-Internal discussion
-Minn. Stat. 268B. FAMILY AND MEDICAL BENEFITS
Paid Family and Medical Leave (PFML) coverage for statutorily excluded employers | Mass.gov

CURRENT POSITION:
3.027 Urges the Legislature to oppose establishing public school teacher or other school district employee salaries and fringe benefits on a statewide or regional basis.

4.039 Urges the legislature to fully fund, with state aid, the premiums and associated costs for the proposed paid Family and Medical Leave Bill for school districts, should this become law. (2019)

CURRENT LAW:

Minn. Stats 268B.14 and 268B.27 mandates that employers must pay at least 50% of the annual insurance premiums for the state family and medical benefit program, with employees covering the remaining portion through wage deductions that cannot reduce their pay below the legal minimum wage. The other statute clarifies that this law does not allow employers to force employees to use up their sick or vacation time before or during the paid leave, nor does it limit an employer's ability to offer better, supplementary leave benefits.

268B.14 PREMIUMS.
Subd. 3.Employee charge back. Notwithstanding section 177.24, subdivision 4, or 181.06, subdivision 1, and subject to subdivision 6, employers must pay a minimum of 50 percent of the annual premiums paid under this section. Employees, through a deduction in their wages to the employer, must pay the remaining portion, if any, of the premium not paid by the employer. Such deductions for any given employee must be in equal proportion to the premiums paid based on the wages of that employee. Deductions under this section must not cause an employee's wage, after the deduction, to fall below the rate required to be paid to the employee by any applicable statute, regulation, rule, ordinance, or government resolution or policy, whichever rate of pay is greater.

268B.27 RELATIONSHIP TO OTHER LEAVE; CONSTRUCTION.
Subd. 2.Construction.
Nothing in this chapter shall be construed to:
(1) allow an employer to compel an employee to exhaust accumulated sick, vacation, or personal time before or while taking leave under this chapter;
(2) prohibit an employer from providing additional benefits, including but not limited to covering the portion of earnings not provided during periods of leave covered under this chapter including through a supplemental benefit payment, as defined under section 268B.01, subdivision 41;
(3) limit the parties to a collective bargaining agreement from bargaining and agreeing with respect to leave benefits and related policies and employee protections that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements in this chapter; or
(4) be applied so as to create any power or duty in conflict with federal law.

BACKGROUND PROVIDED BY MSBA:

The Minnesota Paid Family and Medical Leave (PFML) Act, now referred to as Paid Leave, has a history rooted in years of legislative effort, finally coming to fruition in 2023. It will start on January 1, 2026. It is one of the most significant changes to Minnesota employment law and makes the state the first in the Midwest to enact a comprehensive paid leave program.

Here is a history of the law:
Legislative History and Passage

- Long-Term Goal: Paid Family and Medical Leave had been a legislative goal for proponents in Minnesota for over a decade.
- 2023 Enactment: The bill (known as HF 2 / SF 2) was successfully passed by the Democratic-Farmer-Labor (DFL) controlled House and Senate during the 2023 legislative session.
- Governor's Signature: Governor Tim Walz signed the legislation into law on May 25, 2023, officially creating the new state-run insurance program.

MN Paid Leave Details

The law establishes a state-run insurance program, modeled after the state's unemployment insurance fund, to provide partial wage replacement and job protection for employees who need to take time off for family or medical reasons.

- Funding: The program is funded through a payroll tax (referred to as a premium) on employee wages, which is split between employers and employees. The initial funding came from a significant appropriation from the state's budget surplus (approximately $670 million in seed money).
  - Original Premium Rate: The initial rate was set at 0.70% of the employee's wages.
  - 2024 Amendment: In 2024, the Legislature amended the law, raising the premium rate to 0.88% of taxable wages, based on an actuarial analysis to ensure the fund's solvency.
- Coverage: The law applies to nearly all Minnesota employers regardless of size, including both private and public sectors.
- Leave Types and Duration: Eligible employees will be able to take:
  - Up to 12 weeks of medical leave for an employee's own serious health condition (including pregnancy).
  - Up to 12 weeks of family leave for purposes such as bonding with a new child, caring for a family member with a serious health condition, qualifying military exigencies, or safety leave related to domestic violence, sexual assault, or stalking.
  - A combined maximum of 20 weeks of leave in a 52-week benefit period.

Implementation Timeline

While the law was passed in 2023, the program has a phased rollout:

- Premium Collections: Employers and employees will begin contributing the payroll premiums on January 1, 2026.
- Benefits Start: Employees can begin taking leave and receiving benefits on January 1, 2026.
- Administration: The program is administered by a new Family and Medical Benefits Insurance Division within the Department of Employment and Economic Development (DEED). The delay between passage and effective date is intended to give the department time to build the necessary administrative and technological infrastructure.

This proposed resolution urges legislators to amend the Minnesota Paid Leave law to grant public school district employers and their collective bargaining units the ability to negotiate an opt-out agreement, or, failing that, to mandate a clear 50/50 employer/employee contribution split.

Resolution # 31

This resolution champions the principles of local control and effective collective bargaining, which are essential for meeting the unique needs of school district employees across the state.

States Allowing Public Entity Opt-Out or Exclusion

Data gathered from states that currently offer a paid leave benefit show that at least three states offer specific mechanisms for public entities, which include school districts, to avoid mandatory participation in statewide PFML or paid leave programs.

State	Program	Public Entity Status	Opt-Out Mechanism	Key Details
Massachusetts[1]	Paid Family & Medical Leave (PFML)	Excluded	**Exclusion/Opt-In:** Public employers (municipalities, districts, political subdivisions, regional school districts) are automatically excluded from the mandatory contribution.	These entities must actively opt-in by a majority vote of the local legislative or governing body to provide coverage. If they do not opt-in, their employees are not covered by the state PFML.
Colorado[2]	Family and Medical Leave Insurance (FAMLI)	Included, but Opt-Out Available	**Governing Body Vote:** Local governments (which include school districts/charter schools) are included by default but can vote to decline participation (opt-out).	The opt-out decision must be renewed at least every eight years. Employees of opted-out local governments can still voluntarily opt-in to the state program individually, though their job protection under FAMLI is lost since the employer is opted out.
Minnesota	Earned Sick and Safe Time (ESST) Act	N/A (General Precedent)	Collective Bargaining Waiver: The state's ESST Act already grants a waiver option to construction labor unions through their collective bargaining agreements.	This is cited as a pre-existing state precedent for allowing unions to negotiate and waive mandatory state benefits, supporting the argument for a similar PFML opt-out for school districts.

This summary highlights that while some states (like Massachusetts) automatically exclude public entities and require them to opt-in, others (like Colorado) include them by default but provide a formal process for the local governing body to vote and opt-out. Minnesota's precedent with the ESST Act also supports the use of collective bargaining to waive state benefit mandates.

[1] https://www.mass.gov/info-details/paid-family-and-medical-leave-pfml-overview-and-benefits

[2] https://famli.colorado.gov/employers/local-governments/faqs-for-local-governments

The Concern with Current Law on Premiums
The current Paid Leave language, which requires the employer to pay a *minimum* of 50 percent of the premium, creates unnecessary complexity. This ambiguity could result in difficult and inconsistent negotiations, leading to different legal interpretations across various bargaining units. This confusion not only wastes valuable time and resources but also undermines fiscal predictability.

Premiums
Currently, the following information describes the premium rate and how it is split:

- Total Premium Rate (2026): The initial premium rate when the program begins in January 2026 is 0.88% of an employee's wages, up to the Social Security taxable maximum.
- Contribution Split: The total premium is generally split evenly (50/50) between the employer and the employee.
    - Maximum Employee Contribution: 0.44% of wages (50% of 0.88%). Employers cannot deduct more than this amount from the employee's pay.
    - Minimum Employer Contribution: 0.44% of wages (50% of 0.88%). Employers are required to pay at least this amount but may choose to cover up to 100% of the premium.
- Small Employer Rate: Employers with 30 or fewer employees who meet certain wage criteria pay a reduced premium rate, but the maximum employee contribution remains 0.44%.

FY24 Premium Rates for Minnesota Public Schools[3]

Total Premium Cost .88%	50% Employer/Employee Split
74,847,646.96	37,423,823.48

The method for paying these premiums varies significantly by state, falling into three main categories of contribution splits.

1. Joint Employer and Employee Contributions (Shared Premium)
In this model, the total premium is split between the employer and the employee, usually based on a percentage of the employee's gross wages. In most cases, the employer is responsible for withholding and remitting both portions to the state.

[3] Minnesota Department of Education

State	Total Premium Rate (Example)	Contribution Split	Notes
Colorado[4] (FAMLI)	Varies, capped at 1.2%	50% Employer / 50% Employee	Employers with fewer than 10 employees are exempt from paying the employer portion but must still remit the employee portion.
Massachusetts[5] (PFML)	0.88% (for 2025)	Shared, Varies by Leave Type	Large employers (25+ employees) pay a portion of the medical leave premium. Small employers (fewer than 25 employees) are not required to pay the employer share of the medical leave contribution.
Minnesota	0.88% (starting 2026)	Minimum 50% Employer / Maximum 50% Employee	Employers must contribute a minimum of 50% but can choose to pay up to 100% of the total premium.
Oregon[6]	Varies, capped at 1%	40% Employer / 60% Employee	Employers with fewer than 25 employees are not required to pay the employer contribution but must remit the employee portion.
Washington[7] (PFML)	0.92% (for 2025)	Approx. 28.48% Employer / 71.52% Employee	Employers with fewer than 50 employees are not required to pay the employer portion, but must still collect the employee portion.

2. Employee-Only Contribution
Some long-standing PFML programs, often built upon existing Temporary Disability Insurance (TDI) systems, are funded exclusively by employee payroll deductions.

- California (PFL/SDI): Funded entirely through employee contributions to the State Disability Insurance fund.[8]
- New York (PFL): The Paid Family Leave portion is fully funded by employees through a payroll deduction, with a contribution rate of 0.388% of gross wages (up to an annual maximum for 2025). New York also uses a mandatory private insurance system.[9]
- Rhode Island (TDI/TCI): Funded by mandatory employee payroll deductions for its Temporary Disability and Caregiver Insurance programs.[10]

3. Employer-Only Contribution
In rare cases, the entire cost of the program is borne by the employer.

- District of Columbia (PFML): Funded entirely by a payroll tax paid by covered employers. Employee contributions are not collected for this program.[11]

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[4] https://famli.colorado.gov/employers/local-governments/faqs-for-local-governments
[5] https://www.mass.gov/info-details/paid-family-and-medical-leave-pfml-overview-and-benefits
[6] https://paidleave.oregon.gov/
[7] https://paidleave.wa.gov/
[8] https://edd.ca.gov/en/disability/paid-family-leave/
[9] https://paidfamilyleave.ny.gov/
[10] https://ripaidleave.net/
[11] https://does.dc.gov/page/dc-paid-family-leave

Based on an analysis of the mandatory Paid Family and Medical Leave (PFML) programs across the United States, the funding split for the total premium contributions (employer and employee shares) can be categorized as follows.
This count includes the 13 states and the District of Columbia with mandatory, government-run PFML programs, focusing on the minimum required contribution for larger employers.

Category (Employer Share of Total Premium)	Count	States/Jurisdictions
Employer Pays 50%	5	Colorado (CO), Delaware (DE), Maine (ME), Maryland (MD), Minnesota (MN)
Employer Pays More Than 50%	1	District of Columbia (DC)
Employer Pays Less Than 50%	8	California (CA), Connecticut (CT), Massachusetts (MA), New Jersey (NJ), New York (NY), Oregon (OR), Rhode Island (RI), Washington (WA)

Key Details by Category:

- Employer Pays 50%: In these five states, the cost of the premium is legally mandated to be split evenly between the employer and the employee (50% each).
  - *Note:* Some of these states (e.g., CO, ME, MD) exempt small businesses (e.g., those with fewer than 10 or 15 employees) from paying the employer's 50% share.
- Employer Pays More Than 50%: The District of Columbia is the sole jurisdiction where the program is funded entirely by an employer-paid tax.
  - District of Columbia (DC): 100% employer-funded.
- Employer Pays Less Than 50%: This group includes programs that are mostly or entirely employee-funded, or where the employer's share is statutorily set below 50%.
  - 0% Employer Contribution: California, Connecticut, New York, Rhode Island, and New Jersey primarily or fully fund their programs through employee-only payroll deductions.
  - Less than 50% Contribution: States like Washington (~28.3% employer share), Oregon (40% employer share for large employers), and Massachusetts (~47.7% employer share for large employers) mandate an employer contribution, but it is less than half the total cost.

Rationale for Adopting an Opt-Out Model

Allowing Minnesota school districts to opt out, either through collective bargaining or local governing board vote, is justified by the principles of local control and fiscal efficiency:

- *Local Control*: Educational entities operate under tight, pre-determined budgets and must negotiate complex contracts with multiple bargaining units (teachers, administrators, support staff). A mandatory, one-size-fits-all benefit like Paid Leave prevents local districts and unions from effectively prioritizing their most valuable benefits. Allowing an opt-out permits them to redirect the associated payroll expense to

locally bargained benefits like enhanced vacation time, greater sick leave accrual, or improved health insurance, thereby optimizing benefits for their specific workforce.
- *Fiscal Predictability and Simplicity*: By providing a clear opt-out mechanism (like Massachusetts or Colorado), the state eliminates the administrative ambiguity and inconsistency caused by the current Paid Leave language (which mandates a *minimum* 50% employer contribution). This clarity allows districts to accurately budget and reduces the time and resources wasted on legal interpretation and complex negotiations.

The Massachusetts model of automatic exclusion with an opt-in provision, or the Colorado model of local government opt-out, offers a framework that respects the financial and governance constraints of public education while maintaining local bargaining integrity.

Rationale for Adopting a 50/50 Contribution Rate

The 50/50 contribution split represents a balanced and equitable approach to funding Paid Leave, establishing a core principle of shared financial responsibility for a shared societal and economic benefit. This model is favored by several of the most recently enacted programs, with several states (Colorado, Delaware, Maine, and Maryland) specifically adopting the 50% split for employer and employee contributions for larger businesses. By requiring both parties to contribute equally to the fund's total premium, the system acknowledges that Paid Leave is a critical program that benefits employees through wage replacement and job security, while also benefiting employers through increased workforce retention and morale. This balanced funding mechanism helps ensure the long-term solvency and sustainability of the PFML fund without placing a disproportionate financial burden on one group.

The rationale for mandating a 50/50 split for the Paid Leave premium is rooted in the urgent need for clarity, fiscal responsibility, and administrative efficiency, particularly within the public sector. The current requirement for a "minimum of 50 percent" employer contribution has created legal ambiguity, leading to confusion in collective bargaining and the potential for taxpayers to be effectively charged twice. By establishing a clear, uniform 50/50 contribution model, the law allows public employers, such as school districts, to accurately predict future costs, thereby supporting essential long-term budget planning and fiscal responsibility. This standardization also dramatically simplifies administrative processes and payroll, eliminating the burden of negotiating varied contribution rates across multiple bargaining units, and ensures equitable application of the premium cost for all employees regardless of their specific bargaining unit.

RATIONALE:

Granting Minnesota public school districts and their collective bargaining units the authority to opt out of the Paid Leave program is crucial for upholding the principles of local control and fiscal efficiency, allowing them to have the option to redirect mandated payroll expenses toward other locally prioritized benefits like enhanced sick leave or improved health insurance. However, if an opt-out mechanism is not available to protect local bargaining integrity, the law should be amended to mandate a clear, uniform 50/50 employer/employee contribution split. This standardization is necessary because the current "minimum 50 percent" employer requirement creates legal ambiguity, complicates collective bargaining, and undermines fiscal predictability for public entities. Implementing a 50/50 division ensures administrative simplicity, equitable cost-sharing, and promotes the long-term solvency of the Paid Leave fund by establishing a core principle of shared financial responsibility.

Therefore, MSBA recommends passage.