

# 6

## Charter School Boards & Staff In-Service

### Minnesota Employment Law

#### MN Statute 181

#### Module No. 6

# Parent Leaves

MN Statute 181 Section 940, 941, 9412, 9413, 942 & 943



Minnesota charter schools are subject to MN Statute 181 - Employment Law. This law is the general employment law in the State of Minnesota that applies to all employers and employees.

One of the fiduciary duties of board members is to know the laws that apply to the school, and the charter school has a legal responsibility to notify employees of the terms and conditions of employment in the public charter school - especially since those terms and conditions are different than employment in traditional public schools.

These In-service Modules provide “bite size” lessons on Minnesota’s Employment Law for use as monthly in-services with public charter school boards and staffs. We hope that charter school boards and administrators will find these in-service modules a helpful tool.

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### PARENT LEAVES

*In the 2009 revision of Minnesota’s Charter School Law – MN Statute 124.D 10, the legislature lists MN Statute 181 as a law with which a charter school and a charter school board must comply. Within this law, Parental Leave guidelines are outlined in sections 181.941-181.944.*

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#### 181.940 – Definitions

##### Employee

"Employee" means a person who performs services for hire for an employer from whom a leave is requested under sections [181.940](#) to [181.944](#) for:

- (1) at least 12 consecutive months immediately preceding the request; and
  - (2) for an average number of hours per week equal to one-half the full-time equivalent position in the employee's job classification as defined by the employer's personnel policies or practices or pursuant to the provisions of a collective bargaining agreement, during those 12 months.
- Employee includes all individuals employed at any site owned or operated by the employer but does not include an independent contractor.

##### Employer

"Employer" means a person or entity that employs 21 or more employees at at least one site, except that, for purposes of the school leave allowed under section [181.9412](#), employer means a person or entity that employs one or more employees in Minnesota. The term includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, or other governmental subdivision.

##### Child

"Child" means an individual under 18 years of age or an individual under age 20 who is still attending secondary school.

### **181.941 - Parenting Leave**

#### Six-week leave; birth or adoption

An employer must grant an unpaid leave of absence to an employee who is a natural or adoptive parent in conjunction with the birth or adoption of a child. The length of the leave shall be determined by the employee, but may not exceed six weeks, unless agreed to by the employer.

#### Start of leave

The leave shall begin at a time requested by the employee. The employer may adopt reasonable policies governing the timing of requests for unpaid leave. The leave may begin not more than six weeks after the birth or adoption; except that, in the case where the child must remain in the hospital longer than the mother, the leave may not begin more than six weeks after the child leaves the hospital.

#### No employer retribution

An employer shall not retaliate against an employee for requesting or obtaining a leave of absence as provided by this section.

#### Continued insurance

The employer must continue to make coverage available to the employee while on leave of absence under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents. Nothing in this section requires the employer to pay the costs of the insurance or health care while the employee is on leave of absence.

### **181.9412 - School Conference and Activities Leave**

#### Leave of 16 hours

An employer must grant an employee leave of up to a total of 16 hours during any 12-month period to attend school conferences or school-related activities related to the employee's child, provided the conferences or school-related activities cannot be scheduled during nonwork hours.

If the employee's child receives child care services as defined in section 119B.011, subdivision 7, or attends a prekindergarten regular or special education program, the employee may use the leave time provided in this section to attend a conference or activity related to the employee's child, or to observe and monitor the services or program, provided the conference, activity, or observation cannot be scheduled during nonwork hours.

When the leave cannot be scheduled during nonwork hours and the need for the leave is foreseeable, the employee must provide reasonable prior notice of the leave and make a reasonable effort to schedule the leave so as not to disrupt unduly the operations of the employer.

#### No pay required; substitute of paid leave

Nothing in this section requires that the leave be paid; except that an employee may substitute any accrued paid vacation leave or other appropriate paid leave for any part of the leave under this section.

### **181.9413 - Sick or Injured Child Care Leave**

An employee may use personal sick leave benefits provided by the employer for absences due to an illness of or injury to the employee's child for such reasonable periods as the employee's attendance with the child may be necessary, on the same terms the employee is able to use sick leave benefits for

the employee's own illness or injury. This section applies only to personal sick leave benefits payable to the employee from the employer's general assets.

"Personal sick leave benefits" means time accrued and available to an employee to be used as a result of absence from work due to personal illness or injury, but does not include short-term or long-term disability or other salary continuation benefits.

### **181.942 - Reinstatement After Leave**

#### Comparable position

An employee returning from a Parenting leave of absence (181.941) is entitled to return to employment in the employee's former position or in a position of comparable duties, number of hours, and pay. An employee returning from a leave of absence longer than one month must notify a supervisor at least two weeks prior to return from leave. An employee returning from a School Conference or Sick Child leave (181.9412 or 181.9413) is entitled to return to employment in the employee's former position.

If, during any of these leaves, the employer experiences a layoff and the employee would have lost a position had the employee not been on leave, pursuant to the good faith operation of a bona fide layoff and recall system, including a system under a collective bargaining agreement, the employee is not entitled to reinstatement in the former or comparable position. In such circumstances, the employee retains all rights under the layoff and recall system, including a system under a collective bargaining agreement, as if the employee had not taken the leave.

#### Pay; benefits; on return

An employee returning from a leave of absence under any of these leaves is entitled to return to employment at the same rate of pay the employee had been receiving when the leave commenced, plus any automatic adjustments in the employee's pay scale that occurred during leave period.

The employee returning from a leave is entitled to retain all accrued pre-leave benefits of employment and seniority, as if there had been no interruption in service; provided that nothing in sections 181.940 to 181.944 prevents the accrual of benefits or seniority during the leave pursuant to a collective bargaining or other agreement between the employer and employees.

#### Part-time return

An employee, by agreement with the employer, may return to work part time during the leave period without forfeiting the right to return to employment at the end of the leave period, as provided in sections 181.940 to 181.944.

### **181.943 - Relationship to Other Leave**

The length of parental leave provided may be reduced by any period of paid parental or disability leave, but not accrued sick leave, provided by the employer, so that the total leave does not exceed six weeks, unless agreed to by the employer.

Nothing in this law prevents any employer from providing leave benefits in addition to those provided in sections 181.940 to 181.944 or otherwise affects an employee's rights with respect to any other employment benefit.

### 181.939 – Nursing Mothers

This provision applies to an “employer” that employs one or more employees.

An employer must provide reasonable unpaid break time each day to an employee who needs to express breast milk for her infant child. The break time must, if possible, run concurrently with any break time already provided to the employee. An employer is not required to provide break time under this section if to do so would unduly disrupt the operations of the employer.

The employer must make reasonable efforts to provide a room or other location, in close proximity to the work area, other than a toilet stall, where the employee can express her milk in privacy. The employer would be held harmless if reasonable effort has been made.

### QUESTIONS FOR DISCUSSION WITH BOARDS AND SCHOOL STAFF

1. How many weeks after a birth or adoption can a leave begin? What is the extenuating circumstance related to this issue?
2. What are the rules for employee benefits when an employee is on parental leave?
3. When can an employer require an employee to take a birth or adoption leave that is less than six weeks?
4. What is one type of accrued paid leave that can be substituted for School Conference and Activities leave?
5. Define a ‘comparable position.’
6. Does part-time work during a leave constitute a nullification of the right to return to a comparable position?
7. What types of leave guarantee an employee their previous position and not a comparable one?
8. Explain how the length of parental leave can be reduced by some types of alternative leaves, but not others.

### ACTIONS

- ✓ Board has adopted leave policies consistent with the provision of MN Statutes 181.
- ✓ Personnel Handbook of the school has information on the different types of leaves and references MN Statute 181 Sections 181.941-181.944.
- ✓ Administration has developed and notified all parties of the procedures for requesting leaves.
- ✓ Board has developed procedures to monitor compliance with the Parent Leave policies.

### **OTHER PROVISIONS OF THE LAW RELATED TO PARENT LEAVES**

#### **181.9435 – Division; Investigations, Reports**

##### Investigations & Reports

The Division of Labor Standards and Apprenticeship shall receive complaints of employees against employers relating to sections [181.940](#) to [181.9436](#) and investigate informally whether an employer may be in violation of sections [181.940](#) to [181.9436](#). The division shall attempt to resolve employee complaints by informing employees and employers of the provisions of the law and directing employers to comply with the law.

The division shall report to the legislature annually on the type and number of employee complaints under subdivision 1, the rate of resolution of complaints, and the rate of repeat complaints against employers.

#### **181.944 - Individual Remedies**

In addition to any other remedies provided by law, a person injured by a violation of sections 181.940 to 181.943 may bring a civil action to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by a court.