



AGENDA
CLEARWATER CITY COUNCIL
WORKSHOP MEETING
MONDAY, NOVEMBER 27, 2023

- 1. Call to Order: 6:00 p.m. at City Hall**

- 2. Personnel Policy**
 - a. Earned Sick and Safe Leave (ESSL)**
 - b. PTO**
 - c. FMLA**

- 3. Adjournment**

and safe time at the end of the year at the employee's hourly rate of pay, or

- 80 hours of earned sick and safe leave for the year, available for the employee's immediate use, without any pay out to the employee for accrued but unused earned sick and safe leave.

When there is a separation from a city's employment and the employee is rehired within 180 days of separation, previously accrued earned sick and safe leave that had not been used will be reinstated. An employee is entitled to use accrued earned sick and safe time and accrue additional earned sick and safe time at the commencement of re-employment.

Retaliation prohibited

An employee returning from time off using accrued earned sick and safe leave is entitled to return to their employment at the same rate of pay received when the leave began, plus any automatic pay adjustments that may have occurred during the employee's time off. Seniority during earned sick and safe leave absences will continue to accrue as if the employee has been continually employed.

There are anti-retaliation provisions included within the law. Specifically, an employer may not discharge, discipline, penalize, interfere with, or otherwise retaliate or discriminate against an employee for asserting earned sick and safe leave rights, for requesting an earned sick and safe leave absence, or pursuing associated remedies.

Further, employers may not factor in any employee's use of earned sick and safe leave into any attendance point system. Additionally, it is unlawful to report or threaten to report a person or a family member's immigration status for exercising a right under earned sick and safe leave.

Learn more

The League hosted a webinar on Aug. 3, 2023, that provided an understanding of how cities can prepare for the implications of the new paid family and medical leave law, learn about the role of the state, key dates, and how to begin to communicate with your staff.

[View a recording of the Aug. 3 webinar, "Introduction to Paid Family and Medical Leave Law and Earned Sick and Safe Time: How Cities Can Prepare."](#)

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FAQs: EARNED SICK AND SAFE TIME (ESST)

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Fast facts

- Minnesota's earned sick and safe time (ESST) law goes into effect Jan. 1, 2024.
- Employers must provide each employee in Minnesota at least one hour of paid sick and safe time for every 30 hours worked, up to at least 48 hours of accrued ESST a year. An employee is anyone who works at least 80 hours in a year for an employer in Minnesota and is not an independent contractor.
- An employer's existing leave policy, such as paid time off (PTO), may already fully or partially meet Minnesota's earned sick and safe time requirements.
- ESST local ordinances are in effect in the cities of Bloomington, Duluth, Minneapolis and St. Paul, Minnesota, and may differ from the state's ESST requirements. Employers are responsible for following the ESST requirements most favorable to their employees.
- The Minnesota Department of Labor and Industry is responsible for enforcing ESST requirements. In addition, affected employees may bring a civil lawsuit to address ESST violations.

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Basic information

What is Minnesota's earned sick and safe time law?

Effective Jan. 1, 2024, Minnesota's earned sick and safe time law requires employers to provide paid leave to employees who work in the state. An employee is anyone who works at least 80 hours in a year for an employer in Minnesota, but does not include independent contractors. Temporary and part-time employees are covered under the law.

Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, with the ability to accumulate at least 48 hours of ESST each year. An employer's existing leave policy, such as PTO, may already meet Minnesota's ESST requirements.

What can earned sick and safe time be used for?

Employees can use their earned sick and safe time for reasons such as:

1. the employee's mental or physical illness, treatment or preventive care;
2. a family member's mental or physical illness, treatment or preventive care;
3. absence due to domestic abuse, sexual assault or stalking of the employee or a family member;
4. closure of the employee's workplace due to weather or public emergency or closure of a family member's school or care facility due to weather or public emergency; and
5. when determined by a health authority or health care professional that the employee or a family member is at risk of infecting others with a communicable disease.

For which family members can an employee use ESST?

Employees may use earned sick and safe time for the following family members:

1. their child, including foster child, adult child, legal ward, child for whom the employee is legal guardian or child to whom the employee stands or stood in loco parentis (in place of a parent);
2. their spouse or registered domestic partner;
3. their sibling, stepsibling or foster sibling;

4. their biological, adoptive or foster parent, stepparent or a person who stood in loco parentis (in place of a parent) when the employee was a minor child;
5. their grandchild, foster grandchild or step-grandchild;
6. their grandparent or step-grandparent;
7. a child of a sibling of the employee;
8. a sibling of the parents of the employee;
9. a child-in-law or sibling-in-law;
10. any of the family members (1 through 9 above) of an employee's spouse or registered domestic partner;
11. any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
12. up to one individual annually designated by the employee.

What ESST responsibilities does an employer have if it already provides leave?

A paid time off (PTO) plan or other type of paid leave (including sick or vacation time) can satisfy the ESST law if the plan meets Minnesota's ESST requirements. Nothing prohibits an employer from providing more generous leave policies than the minimum required by the ESST law.

The name of the employer's paid time off or other paid leave policy does not matter. It does not have to be called "earned sick and safe time" to meet the requirements of the law.

Is the state ESST law the same as the sick time ordinances in several Minnesota cities?

ESST local ordinances are in effect in the cities of Bloomington, Duluth, Minneapolis and St. Paul, Minnesota, and may vary from the requirements under state law.

When Minnesota's statewide earned sick and safe time law goes into effect Jan. 1, 2024, employers are responsible for following the ESST requirements most favorable to their employees. In other words, employers must comply with the specific requirements of the state ESST law and the applicable local ESST ordinance that are

most favorable to their employees. This may mean following some of the requirements of state ESST law and other requirements of the local ESST law.

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General questions

Who is *not* covered by Minnesota's ESST law?

Federal employees and independent contractors are not covered under Minnesota's ESST law. Certain individuals employed by an air carrier as a flight deck or cabin crew member are also not covered. The ESST law does not apply to building and construction industry employees who are represented by a building and construction trades labor organization if a valid waiver of these requirements is provided in a collective bargaining agreement.

Do governmental units need to provide ESST to elected officials?

Only "employees" as defined in the ESST law must be provided ESST; elected officials are not considered employees under the ESST law.

Does the employee have to live in Minnesota to be covered by ESST?

Employees do not have to live in Minnesota to be eligible for ESST accrual but must work at least 80 hours in Minnesota in a year to be eligible; time worked in Minnesota will apply to ESST accrual. If an employer is based in Minnesota but has employees who work in another state, those out-of-state employees are not covered by Minnesota's ESST law.

If an employer contracts with a staffing agency for temporary employees, which entity is responsible under Minnesota's ESST law to meet the sick and safe time obligations for the temporary employees?

Under Minnesota's ESST law, unless there is a contract that states otherwise, the staffing agency is responsible for the ESST obligations.

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Earning hours: Accrual, front loading and carryover

When do employees begin to accrue ESST?

Employees begin accruing ESST on their first day of employment.

What is accrual of hours?

Accrual of hours is when each ESST hour is added to a saved total the employee may use. Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, up to at least 48 hours a year.

Sample scenarios

- Manuel works 30 hours a week at Classic Automotive and has worked there for seven months (28 weeks). Manuel has accrued 28 hours of ESST: $30 \text{ hours worked} \times 28 \text{ weeks} = 840 \text{ hours worked}$. $840 \text{ divided by } 30 = 28 \text{ hours of ESST}$.
- Sara works 40 hours a week at Mid-Minnesota Warehousing and has worked there for three weeks. Sara has accrued four hours of ESST: $40 \text{ hours worked} \times 3 \text{ weeks} = 120 \text{ hours worked}$. $120 \text{ divided by } 30 = 4 \text{ hours of ESST}$.

Can an employer put a cap on how many ESST hours an employee can accrue?

Yes, employers may set a cap or limit on each employee's ESST accrual. Employers must allow each employee to accrue up to at least 48 hours a year, carried over from year to year, until an 80-hour maximum accrual is reached. These limits of 48 hours each year and a maximum accrual of 80 hours for each employee may be higher if an employer agrees, but not lower. See options 2 and 3 below for front loading options that do not involve required carryover.

Sample scenario

- Ali Consultants limits its employees' accrual of ESST hours to the minimum standard of 80 hours. Michelle accrued 30 ESST hours by the end of the first year of her employment. These 30 hours carried over into the second year, during which she accrued an additional 48 hours. She did not use any of these accrued hours. In the third year, Michelle accrues an additional two ESST hours before stopping at a limit of 80 hours ($30 + 48 + 2$). Because the employer

take her to the doctor. Under these circumstances, Victor does not need to comply with Crescent Laundry's 24-hour advance notice policy; rather, he should provide Crescent Laundry with notice as soon as practicable of his ESST use.

- Peter owns O's Market and employs Abdi. O's Market has a written policy requiring seven days advance notice from its employees for sick and safe time use when the absence is foreseeable. Abdi schedules a preventive care check-up for his daughter several months in advance of the check-up but forgets to inform O's Market until two days before the appointment. Under these circumstances, the employer may deny Abdi's use of ESST for the appointment because its written policy meets ESST requirements and the ESST use was foreseeable.

Can an employer require an employee to provide documentation to use ESST leave?

An employer may require an employee to provide reasonable documentation of ESST use only when more than three consecutive days of ESST are used. If the employee is unable to secure the requested documentation, in most cases the employee may supply the employer with a written statement indicating the employee is using or used ESST for a qualifying purpose. The written statement may be written in the employee's first language and does not need to be notarized or in any particular format.

Sample scenario

- Employee Kyle has used ESST for four consecutive days because of illness. Because Kyle has used ESST for more than three consecutive days, Kyle's employer may condition approval of sick and safe time hours on requested documentation. However, if Kyle is unable to get documentation because he did not see a health care professional or he could not obtain the documentation from a health care professional in a reasonable timeframe or without added expense, Kyle can instead provide a written statement that he used the ESST leave for a qualifying purpose.

Must an employee specifically ask to use "sick and safe time" to use it?

No, the law does not require that an employee specifically ask to use "sick and safe time" to use it.

Can an employer require an employee to provide specific details about the reason for using sick and safe time?

No, the law does not require that an employee provide specific details about the reason for using sick and safe time, including details related to the employee's or their family member's medical condition.

Does an employer have to keep medical information about employees confidential?

Yes, an employer must keep health and safety information about an employee or an employee's family member obtained because of the ESST law confidential unless the employee permits disclosure or the disclosure is required by law. Related medical records and documents must be maintained as confidential medical files separate from employee personnel files.

Does an employee have to find someone to cover their shift to use ESST?

No, employers are prohibited from making employees find replacement workers as a condition of using ESST.

Does an employee have to use a certain amount of ESST for each absence?

Employees may use ESST in the smallest increment of time tracked by the employer's payroll system or four hours, whichever is smaller.

Does an employer's PTO policy meet the requirements of the ESST law if their employees can choose whether to use PTO for vacation, sick and safe time, or both?

As long as the PTO policy is as generous as what is required under the ESST law, an employer's PTO policy meets ESST requirements even if an employee chooses to use some or all PTO for vacation leave instead of ESST leave.

May an employee use ESST at the same time as other protected leave under other state or federal laws?

Yes, because the ESST law does not limit or otherwise affect the applicability of other laws that extend other protections to employees, an employee may use ESST at the same time as other protected leave under other state or federal laws.

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Rates of pay

At what rate must ESST be paid?

ESST must be paid at the same hourly rate as an employee earns from employment. Under no circumstances can the hourly rate be less than the applicable local or state minimum wage, whichever is higher.

Is ESST paid at the wage rate at the time of accrual or the wage rate at the time ESST is used?

ESST must be paid at the hourly rate of pay for the shift for which the leave is being used.

If an employee has two or more different rates of pay for the same employer, what should the rate of pay be for sick and safe time hours used?

The rate of pay for the employee's use of sick and safe time should be the rate of pay for the job or shift the employee was scheduled to work but for which ESST hours were used instead.

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Recordkeeping and notice to employees

What ESST recordkeeping responsibilities do employers have?

Employers currently must provide [earnings statements with certain required information](#) to employees at the end of each pay period. When the ESST law goes into effect, employers will be required to include the following additional information on earnings statements:

- the total number of sick and safe time hours available for use by the employee; and
- the total number of sick and safe time hours used by the employee in the pay period.

In addition, [employers are required to keep record of hours worked, as well as other information](#), and must retain these records for three years.

Do employers need to provide employees with notice regarding their rights under the ESST law?

Yes, employers must provide notice to all employees that includes at least the following information:

- employees are entitled to ESST;
- the amount of ESST they will accrue;

- the accrual year for the employee (as set by the employer);
- the terms regarding when employees may use ESST;
- a copy of any existing written policy regarding employees providing notice to use ESST;
- an explanation that retaliation for requesting or using ESST is prohibited; and
- an explanation that employees have a right to file a complaint or to bring a civil action if ESST is denied or if employees are retaliated against for requesting or using ESST.

This notice needs to be provided to employees in English and the primary language of the employee. DLI will prepare a sample notice for employer use; however, employers are not required to use the sample notice as long as their notice contains all of the required information above. The sample notice will be available on the [Workplace notices and posters](#) webpage in English.

DLI will also translate the sample notice into Chinese, Hmong, Somali and Spanish, and will translate the notice into additional languages upon request.

In what manner must employers provide the ESST notice to employees?

Employers must provide the ESST notice in a manner that is at least as effective as one of these options:

- posting a copy of the notice at each location where employees perform work;
- providing a paper or electronic copy of the notice to all employees; or
- posting the notice on a web-based or app-based platform that employees use to perform work.

An employer that provides an employee handbook to its employees must also include in the handbook a copy of the required earned sick and safe time information.

When must an employer provide the ESST notice to employees?

Employers must provide the ESST notice to employees upon the start of their employment or by Jan. 1, 2024, when the ESST law goes into effect, whichever date is later.

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Complaints

What options does an employee have if their employer fails to provide ESST or retaliates against an employee for exercising their rights under the ESST law?

The employee can contact the Minnesota Department of Labor and Industry (DLI) to submit a complaint. In addition, employees may bring a civil lawsuit to remedy ESST violations.

How are complaints filed with DLI?

Complaints regarding violations of the earned sick and safe time requirements can be submitted to DLI's Labor Standards Division at 651-284-5075 or dli.laborstandards@state.mn.us.

Can complaints be filed anonymously?

Complaints can be filed anonymously, but it may be helpful for DLI to have the name and contact information for follow up.

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LEAVES OF ABSENCE

Depending upon an employee's situation, more than one form of leave may apply during the same period of time (e.g., the Family and Medical Leave Act is likely to apply during a workers' compensation absence). An employee will need to meet the requirements of each form of leave separately. Leave requests will be evaluated on a case-by-case basis.

Except as otherwise stated, all paid time off, taken under any of the city's leave programs, must be taken consecutively, with no intervening unpaid leave. The city will provide employees with time away from work as required by state or federal statutes, if there are requirements for such time off that are not described in the personnel policies.

Earned Sick and Safe Leave

Earned Sick and Safe Leave (ESSL) is paid time off earned at one hour of Earned Sick and Safe Leave for every 30 hours worked by an employee, up to a maximum of 48 hours of sick and safe leave per year. The hourly rate of Earned Sick and Safe Leave is the same hourly rate an employee earns from employment with the city. This specific leave applies to all employees (including temporary and part-time employees) performing work for at least 80 hours in a year for the city.

Earned Sick and Safe Leave Use

The leave may be used as it is accrued in the smallest increment of time tracked by the city's payroll system (1/4 hour) for the following circumstances:

- An employee's own:
 - Mental or physical illness, injury or other health condition
 - Need for medical diagnosis, care or treatment, of a mental or physical illness
 - injury or health condition
 - Need for preventative care
 - Closure of the employee's place of business due to weather or other public emergency
 - The employee's inability to work or telework because the employee is prohibited from working by the city due to health concerns related to the potential transmission of a communicable illness related to a public emergency, or seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and the employee has been exposed to a communicable disease or the city has requested a test or diagnosis.
 - Absence due to domestic abuse, sexual assault, or stalking of the employee provided the absence is to:
 - Seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking
 - Obtain services from a victim services organization
 - Obtain psychological or other counseling
 - Seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault or stalking

