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## [MINNESOTA EARNED SICK AND SAFE TIME WEBINAR NOTES & FAQs](#)

With the state legislature's passage of the Earned Sick and Safe Time ("ESST") mandate, Minnesota is poised to join 18 other states, plus Washington, D.C., as jurisdictions that have enacted a statewide paid sick leave or general paid time off law. Minnesota ESST will go into effect on January 1, 2024. As you know local paid sick and safe leave mandates already exist in four Minnesota municipalities: [Bloomington](#), [Duluth](#), [Minneapolis](#), and [St. Paul](#).

### **Minnesota Wage Theft Law**

With this new legislation, it's important for all Minnesota employers to consider their compliance with the Minnesota Wage Theft Law, which will work along with the Minnesota ESST. The Minnesota Department of Labor and Industry ("DLI") has [a guidance document](#) on the Wage Theft Law and [a wage theft question and answer page](#) clarifying this law. Further, it has issued [a sample notice form](#) businesses can use to comply with the notice requirements. Alternatively, employers can develop a written notice containing all nine areas of information listed below.

#### **Information to Be Disclosed to New Employees by Employers (Minn. Stat. § 181.032)**

When a new employee begins employment, employers must provide written notice of the following information to the employee:

- Employee's employment status and whether an employee is exempt from minimum wage, overtime and other state wage and hour laws, and if so, on what legal basis;
- Number of days in the employee's pay period and the regularly scheduled payday;
- Date the employee will receive the first payment of wages earned;
- Employee's rate or rates of pay and the basis thereof, including whether the employee is paid by the hour, shift, day, week, salary, piece, commission or other method and the specific application of any additional rates;
- Allowances, if any, that may be claimed for permitted meals and lodging;
- Provision of paid vacation, sick time or other paid time off (PTO), how the paid time off will accrue and terms for its use;
- A list of deductions that may be made from the employee's pay;
- Employer's legal name and the operating name, if different;
- Physical address of employer's main office or principal place of business and a mailing address, if different; and
- Employer's telephone number.

Once the notice has been provided, employees must sign the notice acknowledging that they have seen the information and the employer must retain a copy of the signed notice. The document must

also inform the employee that a version of the notice is available in other languages, and if requested, the employer must provide the translated version of the notice in the requested language, at its own cost. The DLI has statements available in multiple languages that must be added to the notice (<https://www.dli.mn.gov/business/employment-practices/employee-notice>). If any of the information changes during the course of employment, the employee must be given notice of the change prior to implementation.

### **Earnings Statement Disclosures (Minn. Stat § 181.032)**

The Minnesota Wage Theft Law's existing earnings statement disclosure requirements include:

- Employee's name;
- Total hours worked in the pay period;
- Employee's rate or rates (if more than one method of calculation) of pay and basis thereof, including whether the employee is being paid by the hour, shift, day, week, salary, piece, commission or other method;
- Allowances claimed for permitted meals and lodging;
- Total amount of gross pay earned in the pay period;
- List of deductions made from the employee's pay;
- Net amount of pay after all deductions are made;
- Date pay period ended;
- Employer's legal and operating name;
- Employer's telephone contact; and
- Physical address of employer's main office or principal place of business and a mailing address, if different from the main office or principal place of business.

Beginning January 1, 2024, the following, additional information must also be included on the employee's earnings statement:

- The amount of earned ESST accrued by the employee and available for use;
- The total number of used ESST by the employee during the pay period.

If an employer normally provides electronic statements but receives at least 24 hours' notice that an employee prefers to receive a hard copy of the earnings statement, the employer must provide the employee with a paper copy of the statement and continue providing paper copies of the statements for that employee, until requested otherwise.

If an employer fails to comply with either portion of Minn. Stat. § 181.032, the Commissioner of the DLI may issue a compliance order against the employer. Failure to comply with such an order may subject the employer to a civil penalty of up to \$1,000 for each violation for each employee. Employees affected by these violations may also bring civil actions seeking damages against the employer.

### **General Provisions of Minnesota ESST**

Minnesota ESST, much like Minneapolis and St. Paul's respective sick and safe time ordinances, generally provides the following:

1. Covered employees receive with up to 48 hours of paid leave per year; and
2. The time can be taken for various reasons, including when the employee is sick, to care for a sick family member, or seek assistance if they or a family member experienced domestic abuse.

### **Who is a Covered Employer?**

Minnesota ESST broadly defines the term employer. Any individual or business with one or more employees in Minnesota must provide ESST to its covered employees. This includes staffing agencies who lease employees to another employer. However, temporary employees supplied to an employer by a staffing agency are considered employees of the staffing agency.

#### FAQs:

Q: Are non-profits or religious organizations exempt?

A: *No.*

### **Who is a Covered Employee?**

Employees are covered by Minnesota ESST if they work at least 80 hours in Minnesota in a year. The law covers part-time and temporary employees, but excludes independent contractors and individuals employed by an air carrier as a flight deck or cabin crew member (provided certain requirements are met).

#### FAQs:

Q: Are there any exempt employees?

A: *Exempt employees include:*

- *Independent contractors; and*
- *Individuals who are employed by an air carrier as a flight deck or cabin crew member who:*
  - *Is subject to U.S.C, title 45, sections 181-188;*
  - *Works less than a majority of their hours in MN in a calendar year; and*
  - *Are provided with paid leave equal to or exceeding the amounts required under ESSL.*

Q: We hire college interns as well as seasonal employees. Do they accrue ESSL?

A. *Yes. Temporary workers (including interns and seasonal employees) are eligible for ESSL so long as they perform at least 80 hours of work for the employer in Minnesota.*

Q: What if we are a MN business but have a location in ND. Are the ND employees covered? What if the ND employees live in ND?

*A: It depends. If a ND employee works at least 80 hours in Minnesota in a year, they will be entitled to ESST.*

Q: What about employees who work remote and live in another state, but they come to our corporate office for more than 80 hours a year?

*A: Yes. Any employee who performs work in Minnesota for at least 80 hours in a year for their employer is eligible for ESST.*

Q: What would you recommend for companies that are multi-state employer (with headquarters in MN). Would you add this policy company-wide or just for MN Employees? For fairness, ease of implementation - etc. Suggestions?

*A: We would recommend reviewing your existing policies with employment counsel to determine whether it makes sense to provide ESST company-wide or only to your Minnesota employees. If you have a PTO policy that employees can use for state/local paid sick leave-covered reasons, we recommend reviewing the policy with employment counsel to ensure that it meets ESST's minimum requirements.*

### **Definition of Family Member**

Under the Minnesota ESST, the definition of family member for whom the employee may take ESSL is extremely broad. It includes the following:

- The employee's child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or a child to whom the employee stands in loco parentis;
- The employee's spouse or registered domestic partner;
- The employee's sibling, stepsibling, or foster sibling;
- The employee's biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child;
- The employee's grandchild, foster grandchild or step-grandchild;
- The employee's grandparent or step-grandparent;
- A child of the sibling of the employee;
- A sibling of the employee's parents;
- A child-in-law or sibling-in-law;
- Any family members of the employee's spouse or registered domestic partner;
- Any individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
- Up to one individual annually designated by the employee.

### **Eligible Reasons for Using ESST**

ESST may be used for any of the following reasons:

- The employee’s 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, or preventive medical or health care;
- Care of a family member with a mental or physical illness, injury, or other health condition, medical or who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or other health condition, preventive medical or health care;
- Absence related to employee’s or family member’s need to seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking. This includes seeking relocation, taking steps to secure an existing home due to domestic abuse, seeking legal advice or taking legal action resulting from domestic abuse, sexual assault, or stalking, obtaining services from a victim services organization, and obtaining psychological or other counselling;
- Closure of the employee’s place of business due to weather or other public emergency or an employee’s need to care for a family member whose school or place of care has been closed due to weather or other public emergency;
- The employee’s inability to work or telework because the employer prohibits work because of health concerns related to the potential transmission of a communicable illness related to a public emergency, or employee is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease or the employee’s employer has requested a test or diagnosis; and
- When it is determined by the health authorities having jurisdiction or by a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.

#### FAQs:

Q: Does the employee have ability to request MN ESST use or do we need to listen to their reason and know MN ESST applies?

*A: The employee is not required to mention the term “ESST” or make any specific reference to Minnesota Earned Sick and Safe Time when requesting time off that is protected under the law.*

#### **Accrual Rate, Carryover, and Frontloading**

Accrual and Carryover: Under the Minnesota ESST, employees must accrue one hour of ESST for every 30 hours worked, up to a maximum of 48 hours of ESST in a year. ESST begins to accrue on the employee’s first day of employment. Employees may carryover their unused, accrued ESST from one year to the next, subject to an 80-hour maximum cap.

Usage Waiting Period: A newly hired employee can begin using ESST as soon as it is accrued; there is no usage waiting period. This contrasts with the Bloomington, Duluth, Minneapolis, and St. Paul paid sick and safe time ordinances, which each allow for a 90-calendar day usage waiting period.

Usage Cap: Minnesota ESST does not appear to set a cap on the amount of available ESST an employee can use per year.

Frontloading: In lieu of permitting the carryover of accrued but unused ESST, an employer may frontload ESST by providing an employee with ESST that meets or exceeds the amounts under the law at the beginning of the year. How much ESST is frontloaded will depend on whether the employer will be paying the employee for any accrued but unused ESST at year-end:

- If an employer frontloads 48 hours at the beginning of each year, the employer must pay the employee for any accrued but unused ESST.
- If an employer frontloads 80 hours at the beginning of each year to its employees, then the employer is not required to pay employees for accrued but unused ESST at year end.

#### FAQs:

Q: If our PTO policy allows for up to 40 hours of carryover with a “use it or lose it” by March 31, would we need to change that to 80 hours of carryover that doesn’t expire under the new ESST?

*A: For the employees who are eligible for ESST, yes. However, remember that employees cannot exceed 80 hours of accrued ESST at any time and can only accrue up to 48 hours per year (unless the employer agrees to higher amounts).*

Q: Is there a maximum number of hours an employee can earn? If they carry over, will they also earn additional hours in the following year?

*A: Employees can accrue a maximum of 48 hours of ESST in a year. Employees are also subject to an 80-hour maximum cap on ESST, meaning their ESST balance (through carryover and accrual) cannot be larger than 80 hours (unless otherwise agreed to by the employer).*

Q: If you can carry over 80 hours, then can you still accrue an additional 48 hours during the next year, therefore, have 128 hours to use?

*A: No. An employee cannot have more than 80 hours of ESST at any time, unless their employer agrees to a higher amount.*

Q: Do they carryover what they have unused up to a maximum of 80 hours in any one year - or can they carry over 80 hours - to no specific maximum.

*A: Employees are only allowed to carry over unused, accrued ESST. An employee cannot have a balance of more than 80 hours of ESST at any time (through carryover or accrual), unless their employer agrees to a higher amount.*

Q: If a full-time employee does not meet minimum full-time hours are we required to still give accrual for the hours they do work?

*A: ESST applies regardless of full-time/part-time status. If an employer is administering ESST using the accrual method, an employee (regardless of full-time/part-time status) is entitled to accrue 1 hour of ESST for every 30 hours worked.*

Q: If an employee leaves and are paid out their accrued/unused time, would we need to reinstate if they return within the time frame?

*A: No. If an employee is paid out their accrued, unused ESST (or PTO, where the PTO can be used for ESST reasons), they employee would not be entitled to reinstatement of their accrued ESST/PTO.*

Q: What happens when there are two groups of employees (1 group earns SST and does not earn PTO, 2 group earns PTO that complies with SST and does not earn SST) how do you handle the unused of sick and safe time once they transfer to a PTO plan from a sick and safe accrual? We have employees in St Paul, Duluth, Bloomington, & Minneapolis.

*A: Generally, if the employee has accrued SST and is being transferred to a PTO Policy (which can be used for SST-covered reasons), the employee's SST should be converted to PTO so that the transfer does not result in a loss of SST accrual for the employee.*

Q: If an employee leaves, we pay them their unused accrued PTO. Do we need to pay them their unused, accrued ESST?

*A: No.*

Q: Is there a carryover amount of sick hours?

*A: Employees are allowed to carryover accrued, unused ESST under the accrual method. Employees are able to carryover accrued, unused ESST from one year to the next, subject to a maximum cap of 80 hours (i.e., the employee can only have a maximum balance of 80 hours of unused ESST at any one time).*

**Frontloading:** To avoid year-end carryover of ESST, an employer can elect to either (a) provide employees with a frontloaded grant of 48 hours of ESST for their immediate use at the beginning of the subsequent year and payout an employee's balance of earned, unused ESST at year-end, or (b) provide employees with a frontloaded grant of 80 hours of ESST for their immediate use at the beginning of the subsequent year. While not completely clear, it appears that if the employer goes with the 80-hour frontloading option, no year-end payout or carryover of earned, unused ESST is required.

## FAQs:

Q: What is the benefit of frontloading hours?

*A: Frontloading avoids the carryover requirements under ESST. However, it does allow employees access to their full ESST bank at the beginning of employment, although employers can still track accrual if they wish (employees are only entitled to use ESST they have accrued (earned)).*

Q: Can ESST be cashed out instead of used to replace unworked hours? What are the payout requirements for frontloading?

*A: An employer may frontload ESST for the year for the employee's immediate use as follows:*

- *48 hours must be frontloaded if the employer pays the employee for accrued but unused ESST at the end of the year at the same hourly rate as an employee earns from employment; or*
- *80 hours must be frontloaded if the employer does not pay the employee for accrued but ESST at the end of a year at the same or greater hourly rate as an employee earns from employment.*

Q: If you don't frontload, do you still have to pay out accrued unused ESSL that isn't carried over?

*A: No.*

Q: To clarify, if we frontload our PTO and it expires at the end of the year, is that still a greater benefit? Or do we have to offer the PTO to carry over as well?

*A: If the amount that you frontload in PTO meets or exceeds ESST's frontloading requirements, you do not have to comply with ESST's carryover requirements.*

Q: If an employee is part-time and works 20 hours a week, they get the FULL 48 hours or 50% of it?

*A: Under the frontloading method, conceivably yes. ESST does not distinguish between amounts that must be frontloaded to full-time employees vs. part-time employees. However, it is possible the Minnesota Department of Labor and Industry may address this issue in subsequent rulemaking or FAQs.*

**Increments of Use:** Employees can use ESST in the smallest increment of time tracked by the employer's payroll system, provided such increment is not more than four hours.

**Rate of Pay:** ESST must be paid at the same hourly rate as an employee earns from employment, but not less than the state minimum wage or any applicable local minimum wage.

**Documentation:** An employer can require reasonable documentation that ESST was used for a covered reason when an employee uses more than three consecutive days of ESST. The ESST mandate contains additional documentation standards, including examples of what is considered reasonable documentation for certain covered absences.

**Payout on Termination/Reinstatement Upon Rehire:** Employers are not required to pay out accrued, unused ESST upon an employee's termination, resignation, retirement, or other separation from employment. However, if an employee is separated from employment and rehired within 180 days of separation by the same employer, the employer must reinstate previously accrued, unused ESST.

**Compliance Using Existing Policy:** Employers with paid time off or other paid leave policies that allow an employee to use leave for the same reasons and under the same conditions as ESST and that meet or exceed the mandate's minimum standards and requirements can use those policies to comply with the Minnesota ESST mandate. In these instances, the employer would not be required to provide additional ESST to its employees.

#### [FAQs:](#)

Q: Does this new legislation mean that there will no longer be the option for companies to have strictly a PTO policy that encompassing everything (i.e., there will HAVE to be a separate bucket for sick)?

*A: No. Employers do not have to create a separate bucket of leave for ESST so long the existing policy is as or more generous than ESST's requirements.*

Q: If an employee uses 15 days of their accrued PTO hour for vacations, do we then have to still provide them the 48 hours of ESST, even though they already chose to burn their PTO on a vacation?

*A: Assuming that employees can use their PTO for ESST purposes, and the PTO policy complies with ESST's minimum requirements, an employer would not have to provide additional ESST on top of the PTO already provided where the employee used their PTO for non-ESST purposes.*

Q: Right now, under our PTO policy, not all PTO is granted when requested in order to allow for staffing levels. But, if an employee is requesting PTO for a covered reason under the ESSL, would we automatically have to grant it even if it means we'll be short staffed?

*A: Under the text of the statute, so long as the employee meets the notice requirements under ESST, an employer cannot deny the use of PTO for an ESST-covered reason. However, it is possible the Minnesota Department of Labor and Industry may address this issue in subsequent rulemaking or FAQs.*

Q: Our PTO policy covers employees who work 30 hours or more a week. My understanding is that we need to offer at least 1 hour for every 30 hours worked, so that now applies to all employees. With that said, is the recommendation to make that PTO vs. ESST, so we don't have ESSL for a handful of employees and PTO for others? Or should I say, can we do that?

*A: You can expand your PTO policy to cover all employees (not just those who work 30 hours or more per week). Alternatively, you could offer PTO for those who work 30 hours or more in a week (and allow said employees to use PTO under the protections of ESST) and allow non-PTO-eligible employees to accrue ESST. A variety of factors should be considered when deciding how your existing policies should interact with the new ESST law, including but not limited to how many employees are/will be eligible for ESST once it becomes effective January 1, 2024.*

Q: We have part-time interns that we pay hourly, but they do not have "set" schedules. We let them work as their schedule allows. Thus, they do not "call in" sick. Could they then say, "I am sick today" and then they would deserve the earned leave pay, though they would previously have just not worked that day?

*A: Under the facts presented here, probably yes. If they work at least 80 hours a year for that employer in Minnesota, they are eligible for ESST. However, we would recommend employers establish notice procedures that align with ESST's requirements to ensure that employees are properly utilizing ESST.*

Q: What if you have a PTO plan that provides more than the required amount under ESST - do you still need to send out a new letter?

*A: There are still notice requirements that apply, even if your PTO plan provides more generous benefits than ESST. Employers must give notice to employees in English and the primary language of the employee, as identified by the employee that contains:*

- 1. A statement that the employee is entitled to ESST, including the amount of ESST, the accrual year for the employee, the terms of its use, and a copy of the written policy for providing notice to the employer of the use of ESST;*
- 2. A statement that retaliation against employees who request or use ESST is prohibited; and*
- 3. A statement that each employee has the right to file a complaint or bring civil action if ESST is denied by the employer or the employee is retaliated against for requesting or using ESST.*

Q: If you have an attendance point system and an employee uses 48 hours for ESST, can the employer give points for absences after that?

*A: Employers are not allowed to use "points" against an employee for using ESST for correct purposes. However, if the employee runs out of ESST, the employer is allowed to give "points" for absences after that.*

**Collective Bargaining Agreements (CBA):** With the exception of a CBA with a bona fide building and construction trades labor organization, it appears that the ESST mandate will apply to employees covered by a CBA unless the CBA meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements under the mandate.

#### [FAQs:](#)

Q: Will Union employees get the sick time? What about if they are part of a collective bargaining agreement?

*A: Based on the text of the statute, it appears that employers under a collective bargaining agreement must bargain with the union as to the terms of sick time offered to employees, provided such sick time offered does not conflict with ESST's minimum standards and requirements.*

Q: Are union construction employees exempt from this leave?

*A: No. However, ESST may be waived by a collective bargaining agreement with a bona fide building and construction trades labor organization that has established itself as the collective bargaining representative for the affected building and construction industry employees. However, in order for such waiver to be valid, it must explicitly reference the sections in the law (Minn. Stat. §§ 181.9445 to 181.9448) and clearly and unambiguously waive application of those sections to the employees subject to the collective bargaining agreement.*

#### **Effect on Other Paid Sick and Safe Time Laws in Minnesota Cities**

Minnesota ESST does not preempt any other paid sick leave laws passed by cities in Minnesota with greater benefits. There are four cities in Minnesota with their own paid sick and safe time laws that employers will need to coordinate with the new, state-wide ESST requirements to ensure they are providing the greater benefits. Those cities are:

- Bloomington (effective July 1, 2023);
- Duluth;
- Minneapolis; and
- St. Paul.

#### [FAQs:](#)

Q: What about employees that should report to work in the office, but choose to work from their homes in Minneapolis/St. Paul?

*A: If an employee qualifies for sick and safe time under local ordinance (e.g., Minneapolis, St. Paul, etc.) and qualifies for ESST, the employee is entitled to the protections under both the local ordinance and ESST. This does not mean that an employee is entitled to two, separate buckets of leave, however, so long as the leave the employee does receive meets or exceeds the requirements of both the ordinance and ESST.*

## Notice and Posting Requirements

**Employer Notice:** The amount of ESST accrued and available for use along with the total number of used ESST during the pay period will need to be included in the employee's earning statements or provided in writing by electronic means covering each pay period.

Employers will also be required to provide employees with notice of their ESST rights at the start of employment or on January 1, 2024, whichever is later. The notice must be in English and the primary language of the employee, as identified by the employee. Employers may satisfy the notice requirement by:

1. Posting the notice in each work location in a conspicuous place frequented by all employees;
2. Providing a paper or electronic notice to employees; or
3. Posting the notice on a web-based or app-based platform through which the employees perform work.

**Employee Notice to Employer:** An employer can require notice of an employee's intention to use ESST (a) up to seven days in advance, if the need for use is foreseeable, or (b) as soon as practicable, if the need for use is unforeseeable. If an employer requires employees to provide such notice of an ESST absence, then the employer's written policy must contain reasonable procedures for employees to provide the notice. Further, the ESST mandate states that the employer must provide employees with a written copy of the policy.

**Balance Notice:** At the end of each pay period, employers must provide each employee an earnings statement, either in writing or by electronic means, that includes, among other required content under Minnesota law, (a) the total number of ESST hours accrued and available for use, and (b) the total number of ESST hours used during the pay period.

**Recordkeeping:** Under the mandate, employers must retain records documenting, among other information, hours worked by employees and hours of ESST taken by employees. It appears that such records will need to be retained for at least three years in addition to the current calendar year.

**Retaliation Prohibited:** Employers cannot take any adverse employment action or otherwise retaliate or discriminate against employees for exercising their rights under the ESST mandate. Additionally, employers cannot maintain an absence control policy or attendance point system that counts ESST taken as an absence that may lead to or result in retaliation or any other adverse action.

Employers who maintain employee handbooks must include a notice in their handbook of the employees' rights and remedies under the ESST mandate. [Get More Out of Your Labor Law Poster Program.](#)

## FAQs:

Q: Will handbooks have to be updated to show ESST options?

*A: Yes. We would recommend employers have their handbooks updated by employment counsel to account for ESST.*

## **Next Steps for Minnesota ESST Compliance**

In light of the new Minnesota ESST law, employers should review their leave policies to ensure they meet the ESST requirements, plan for any changes that need to be made to comply with ESST, prepare for the earnings statement requirements, and determine the approach for notice requirements to all employees.

*These are fast-moving times, and the information provided is only current as of today's date (June 9, 2023). The information provided does not, and is not intended to, constitute legal advice; instead, all information is prepared and provided for general informational purposes only.*

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