

Minnesota

# Earned sick and safe time

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Law & Policy Group

A business of Marsh McLennan



# Earned sick and safe time (ESST)

Eligibility, accrual and use

Beginning Jan. 1, 2024

To be eligible, employees must work at least 80 hours in the state in a year for the same employer; independent contractors, some union workers, certain flight deck/cabin crew employees are excluded.

Employers must provide at least 48 hours (one hour for every 30 hours worked) of ESST to covered employees each year.

Employees can use accrued paid leave for illness/injury, domestic violence, closures, and health concerns related to communicable diseases.



# ESST

## Usage, covered reasons, family members, local laws

**Accrual.** Employees start accruing leave on hire date and may use it as they accrue it.

**Carryover/frontloading.** Accrued, unused leave must be carried over – up to 80-hour maximum – unless employer frontloads:

- 48 hours at start of year with payout of accrued, unused ESST at year-end
- 80 hours at start of year with no payout

**Family members.** Immediate and extended family members are in scope, including registered domestic partners, equivalent family relationships, and one designated person per year.

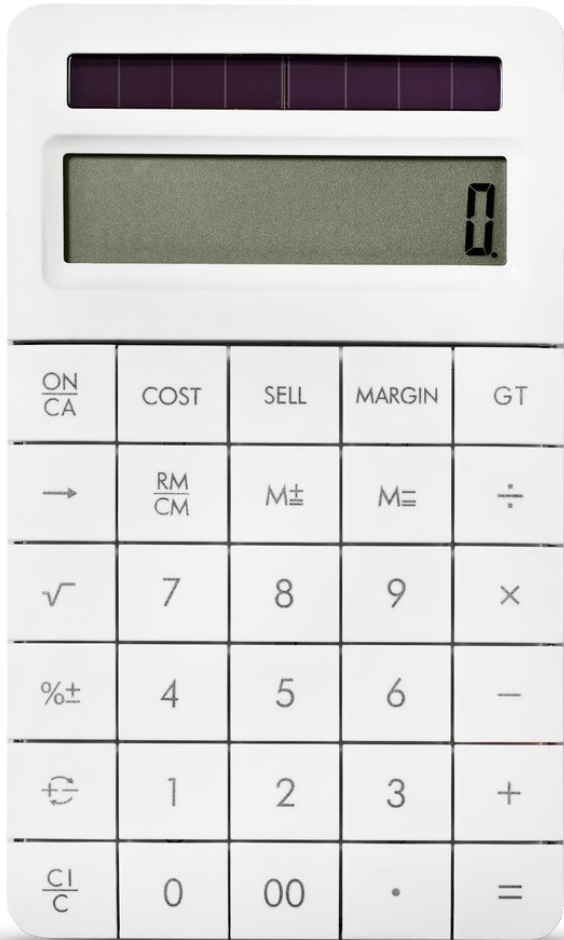
**Leave increments.** Leave can be taken in the smallest increment tracked by payroll system, but minimum increments can't be more than four hours.

## Covered reasons

- Illness, injury, health condition, need for medical or preventive care
- Domestic abuse, sexual assault, or stalking experienced by an employee or family member
- Closure of workplace, school or place of care due to weather or other public emergency
- Health concerns related to communicable illness or disease, including waiting time for test or diagnosis
- Health authority or health professional order of quarantine or isolation related to a communicable disease

**No preemption of local leave ordinances (like Bloomington, Duluth, Minneapolis, St. Paul). Where state and local laws conflict, employees receive the best of both.**

# Rate of pay and accrual amounts



## Rate of pay

- Hourly employees - hourly pay rate
- Salaried employees - calculation is unclear, inclusion or exclusion of bonuses

## Accrual amounts

- Employees do not accrue more than weekly amount equivalent to working 40 hours in a week.
- Full-time employees working fewer than 40 hours in a week may (but are not required to) accrue a lower proportional increment for that week.

Example: Full-time employee works 30 hours in a week and only accrues 75% of the standard weekly amount (i.e., one hour of ESST for that week).

# Payout, reinstatement, transfer of unused accrued ESST

- **Payout upon employment separation** is not required.
- **Payout at year end** is required if employer frontloads 48 hours at the start of the year; it's not required if 80 hours is frontloaded or if ESST is accrued.
- **Employees rehired within 180 days** of employment separation must receive previously accrued, unused ESST.
- **Transferring employees (different division, entity, or location) retain** all accrued, unused ESST at time of transfer.
- **Former employees hired by successor employers within 30 days** of acquisition must receive previously accrued, unused ESST.



# Family member definition



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

- Children (including foster, legal ward, legal guardianship, *in loco parentis*)
- Spouse or registered domestic partner (no statewide registration, but many cities have it)
- Sibling (including step-, foster)
- Parent (including biological, adoptive, foster, step-, *in loco parentis*)
- Grandchild (including step-, foster)
- Grandparent (including step-)
- Niece or nephew
- Aunt or uncle
- Child-in-law or sibling-in-law
- Any of the above family members of employee's spouse or registered domestic partner;
- Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship;
- Up to one individual annually designated by the employee

# Employer policies

- **Existing paid leave policies** (like vacation, paid time off, other paid leave) meeting or exceeding the law's requirements are acceptable.
- Employers can apply **reasonable** notice procedures if they are **written** and **communicated** to employees.
  - Policy may require **seven days advance notice** for foreseeable leaves. For unforeseeable leave, policy must allow notice **as soon as practicable**.
- Any **absence control policy** or **attendance point system** cannot be used against employees for taking ESST.

# Collective bargaining agreements (CBAs)

- ESST law does not apply to **building/construction employees**, if CBA contains a valid ESST waiver.
- ESST law does not diminish the rights of **other union employees** subject to a CBA that meets or exceeds ESST standards.



# Other employer responsibilities

## ✓ Earnings statements

Must include ESST accruals, availability, usage.

## ✓ Notices

- Employers must provide all employees a uniform notice, provided by the Department of Labor and Industry (DLI), via:
  - Posting at each work location
  - Paper or electronic copy
  - Web-based or app-based platform
- Employers must also include notice in employee handbook.
- Notice must be in English and employee's self-identified primary language.

## ✓ Recordkeeping

- Three-year retention period
- Must provide to DLI within 72 hours of a request.
- Employees may inspect records and request destruction after three years.

## ✓ Labor or services contracts

- Employers must ensure labor or services contractors are complying with ESST requirements.
- Duty to inquire is based on reasonably prudent person standard.



# Job protections

Upon return from leave, must return to **former position at same pay** and with all accrued pre-leave benefits and seniority.



## Benefit continuation

- **Must maintain** all group insurance, group subscriber contracts and health plan coverage for employee and dependents
- Employees must continue to pay **active employee rates.**



## Adverse action prohibited

- No discharging, disciplining, penalizing, interfering with, threatening, restraining, coercing, or otherwise **retaliating or discriminating** against an individual for exercising ESST rights
- No reporting, or threatening to report, actual or suspected **citizenship or immigration status** of employee/family member to authorities for exercising, or attempting to exercise, ESST rights

# Enforcement and penalties

**Civil suits.** Employees can file civil lawsuit to recover damages, costs, reasonable attorney's fees, and injunctive and other equitable relief.

**DLI enforcement.** Powers include cease-and-desist order; potential consequences require back pay, gratuities, compensatory damages, an equal amount as liquidated damages, and litigation and hearing costs. Repeated and willful violations subject to a penalty of up to \$10,000 per failure.

**Recordkeeping.** Penalties for failures are up to \$10,000 per failure.



# Resources

## Non-Mercer resources

- [Minnesota Department of Labor and Industry](#)
- [2023 Ch. 53](#) (SF 3035, see Article 12)
- [MN Stat. § 181.9413](#) (effective through Dec. 31, 2023)
- [DLI FAQ](#)
- [DLI fact sheet](#)

## Mercer resources

- [Minnesota adopts paid sick and safe leave requirement](#) (Sept. 27, 2023)
- [Roundup of selected state health developments, second-quarter 2023](#) (Aug. 14, 2023)
- [Minnesota passes paid family and medical leave law](#) (July 10, 2023)
- [Illinois requires paid leave for any reason starting in 2024](#) (April 11, 2023)
- [Roundup: State accrued paid leave mandates](#) (April 29, 2022)





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