



Earned Sick & Safe Time
The "Other" Paid Leave Mandate

October 18, 2023

EARNED SICK & SAFE TIME

WELCOME

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EARNED SICK & SAFE TIME

LEGISLATION & BACKGROUND

Laws 2023, Chapter 53

Passed May 16, 2023

Signed May 24, 2023

House Vote: 70 yea to 61 nay

Senate Vote: 34 year to 33 nay

Top Priority for DFL Legislators

Chief Authors of ESST:

Rep. Liz Olson (Duluth)

Sen. Sandra Pappas (St. Paul)

EARNED SICK & SAFE TIME

LEGISLATION & BACKGROUND

SEPARATE from Paid Family and Medical Leave

ESST:

- Starts 1/1/2024
- Short-Term Leave (6-10 days/year)

PFML:

- Starts 1/1/2026
- Long-Term Leave (up to 5 months/year)

Programs have different regulations, including reasons for leave and definition of family.

ESST exceeds most local sick time ordinances.

Small business (< 5 employees) exceptions in Minneapolis (unpaid), Bloomington (unpaid), and Duluth (exempt) are eliminated.

More expansive or generous local ordinances are still permitted.

EARNED SICK & SAFE TIME

LEGISLATION & BACKGROUND

Updates from the Minnesota Department of Labor and Industry:

- FAQs and instructional videos available on MN DLI ESST page
- Required Workplace Poster and Employee Notice will be published later this fall
- <https://www.dli.mn.gov/sick-leave>

NAVIGATING MINNESOTA'S EARNED SICK & SAFE TIME (ESST) LAW

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Overview of ESST

Earned Sick & Safe Time

- Effective: January 1, 2024
- Applies to all employers in MN, regardless of size
- Does not preempt local paid sick leave ordinances (Minneapolis, St. Paul, Bloomington, Duluth)



Employee Eligibility

- ❑ Must work 80 hours annually
- ❑ Accrual of ESST begins upon employment
- ❑ Earn 1 hour of ESST per 30 hours worked, employers are to provide up to 48 hours of ESST annually



Covered reasons to take ESST

- An employee's own or a family member's illness, injury, health condition, or need for medical or preventive medical care
- Absence due to domestic abuse, sexual assault or stalking of the employee or a family member;
- Closure of a workplace or a family member's school or place of care due to weather or another public emergency
- An employee's inability to work or telework because of health concerns related to (i) potential transmission of communicable illness related to a public emergency or (ii) seeking or awaiting results of a test/diagnosis for a communicable disease related to a public emergency
- A health authority or healthcare provider has determined the employee or a family member to quarantine because of a communicable disease

Definition of “Family Member” under ESST

- An employee’s, spouse’s or registered domestic partner’s
 - ▣ Child, grandchild, sibling, spouse, registered domestic partner, parent or grandparent
 - ▣ Niece, nephew, aunt or uncle
 - ▣ Child- or sibling-in-law
- An employee’s spouse or registered domestic partner
- Any other individual related to the employee by blood or whose close association with the employee is equivalent of a family relationship
- One individual designated by the employee



Creating a Compliant ESST Program

Existing Time Off Policies & Benefits

- **Compliance with ESST is achieved if the employer provides:**
 - ▣ PTO, vacation, or sick leave.
 - ▣ Time off for reasons as stipulated by ESST and the provided leave meets/exceeds ESST's mandates.
 - ▣ No need to offer additional time off once employee has exhausted it all.
- **Benefits:**
 - ▣ Employers must maintain employee's insurance coverage during ESSL.
 - ▣ Employees must continue to pay any portion of such benefits.

Calculating ESST Payments

- ESST accrues based on hours **worked**. ESST must be paid at the same hourly rate an employee earns when they are working.
- **Overtime:**
 - ▣ All hours, including overtime, count towards ESST accrual unless employee is exempt from overtime compensation (professional, administrative, executive roles).
- **Salaried Employees:**
 - ▣ Presumed Work Week: 40 hours.
 - ▣ Exception: If clear evidence shows an employee's regular work week is < 40 hours a week, ESST accrual is adjusted to reflect their actual regular work week.

Employee Notices

- Employers must:
 - ▣ Inform employees regarding their ESST rights in English and their primary language by Jan. 1, 2024 or at the commencement of their employment.
 - ▣ Include ESST rights in employee handbooks.
 - ▣ MN DLI to provide a uniform employee notice form (coming soon).

Avoiding Retaliation & Maintaining Confidentiality

- **Retaliation:** Employers must not retaliate or discriminate against ESST requests or use.
- **Confidentiality:** Employers are obligated to protect the confidentiality of medical & health details, the request and details on the need for ESST leave.
- **Medical Records:** Must be kept apart from personnel file.

ESST Reporting

□ **Calculation**

- Employers calculate and record ESST based on their regular payroll practices (weekly, biweekly, monthly, etc.)

□ **Earnings Statement Reporting**

- At the end of each pay period, the earnings statement must display:
 - Total ESST hours accrued and available for use
 - Hours of ESST used during the pay period

Vesting v. Non-Vesting

- **May not withhold ESST upon employment:** ESST begins to accrue as soon as employees are hired and start working. As employees accrue ESST, they can use it.
- **Upon termination:** No payout of ESST required upon termination. However, if an employee is rehired within 180 days after a layoff or termination, their balance of ESST must be fully restored.

The Latest Developments

- MN DLI recently released FAQs:

<https://www.dli.mn.gov/business/employment-practices/faqs-earned-sick-and-safe-time-esst>



FAQs Coming Soon

- The following FAQs have not been released yet.

FAQS: EARNED SICK AND SAFE TIME (ESST)

Contents

- [Fast facts](#)
- [Basic information](#)
- [General questions](#)
- [Earning hours: Accrual, front-loading and carryover](#)
- Rates of pay (coming soon)
- Recordkeeping and notice to employees (coming soon)
- Using ESST hours (coming soon)
- Complaints and violations (coming soon)

Status of ESST Waivers with Building Trades

- Requirements for ESST accrual can be **waived** via a collective bargaining agreement with a building and construction trades labor organization.
- Important: The waiver must specifically reference the ESST law.



Paid Sick Leave for Minnesota Federal Contractors

- If you are a federal contractor in Minnesota, you must provide paid sick leave pursuant to Executive Order 13706.
- Applies only to any person engaged in performing work on or in connection with a contract covered by the Executive Order.
- Executive Order 13706 applies to four major categories of contractual agreements:
 - (1) procurement contracts for construction covered by the Davis-Bacon Act (DBA);
 - (2) service contracts covered by the McNamara-O'Hara Service Contract Act (SCA);
 - (3) concessions contracts, including any concessions contracts excluded from the SCA by the Department of Labor's regulations at 29 CFR 4.133(b); and
 - (4) contracts in connection with Federal property or lands and related to offering services for Federal employees, their dependents, or the general public.

Paid Sick Leave for Minnesota Federal Contractors

- Both Minnesota State-Wide ESST and Executive Order 13706 require employees to accrue at least 1 hour of ESST for ever 30 hours worked.
- Differences from Minnesota State-Wide ESST:
 - Annual Earning Cap Minimum
 - Federal Regulation: 56 Hours
 - Minnesota ESST: 48 Hours
 - Carryover
 - Federal Regulation:
 - Under both the accrual method and frontloading, paid sick leave carries over from one year to the next. With the accrual method, federal contractors may limit the available sick leave in the “bank” to 56 hours at any time. With frontloading, contractors can limit yearly carryover to 56 hours, where the maximum amount of sick leave in the “bank” for an employee could potentially reach 112 hours (or more if you allow)
 - Minnesota ESST:
 - Accrual Method: Employees can carry over unused sick leave from year-to-year and employers may cap the maximum number of hours in the “bank” to 80 hours (but don’t need to).
 - Frontloading Method: Employers who frontload 48 hours annually are not required to allow carryover but are required to pay out employees for any unused paid sick leave. Employers choosing to frontload 80 hours annually do not have to allow carryover or pay out employees for unused paid sick leave.
- Bottom line: Minnesota federal contractors must comply with local ordinances (Bloomington, Minneapolis, St. Paul, and Duluth), the new State law effective Jan. 1, 2024, *and* regulations from the Executive Order.

Recommendations for Employers

- **Sick Leave & PTO**
 - ▣ Amend programs as necessary
- **Manager Training**
 - ▣ Educate on the provisions of ESST
- **Payroll**
 - ▣ Ensure ESST time is reflected on pay stubs or earning statements
- **Employee Handbook**
 - ▣ Update with relevant ESST information
- **Stay Updated**
 - ▣ Monitor postings from MN DLI on ESST
 - ▣ FAQs on ESST: <https://www.dli.mn.gov/business/employment-practices/faqs-earned-sick-and-safe-time-esst>
- **Seek Assistance**
 - ▣ Contact experienced legal counsel for your specific situation.



QUESTIONS?



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THANK YOU!

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