



Earned sick and safe time

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Labor Standards

ESST overview

- Effective Jan. 1, 2024, Minnesota's ESST law requires employers to provide paid leave to employees.
- Changes to ESST following the 2024 legislative session go into effect May 26, 2024, July 1, 2024, and Jan. 1, 2025.



What is sick and safe time?

Sick and safe time is **paid time off** from work that eligible employees in Minnesota can use for certain reasons, including:

- the employee's mental or physical illness, treatment or preventive care;
- a family member's mental or physical illness, treatment or preventive care;
- absence due to domestic abuse, sexual assault or stalking of the employee or a family member;
- bereavement leave;
- 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
- 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.

Which family members are included?

- 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);
- their **spouse** or registered domestic partner;
- their **sibling**, stepsibling or foster sibling;
- 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;
- their **grandchild**, foster grandchild or step-grandchild;
- their **grandparent** or step-grandparent;
- a **child of a sibling** of the employee;
- a **sibling of the parents** of the employee;
- a **child-in-law** or sibling-in-law;
- any of the **family members** listed in 1 through 9 above **of an 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; and
- up to **one individual annually designated** by the employee.

Who is eligible for ESST?

An employee is eligible for sick and safe time if they:

- are anticipated to work at least 80 hours in a year for an employer in Minnesota; and
- are not an independent contractor.

Who is not covered by Minnesota's ESST law?

- Federal employees.
- Volunteer and paid-on-call firefighters.
- Volunteer ambulance attendants and ambulance service personnel who serve in a paid on-call position.
- Elected officials or a person appointed to fill a vacancy to elected office.
- An individual employed by a farmer, family farm or family farm corporation to do physical labor or manage the farm, if they are hired to work for 28 days or less each year.
- 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.
- Certain family caregivers who have waived their rights to ESST.

How much sick and safe time can employees earn?

An employee earns one hour of sick and safe time for every 30 hours worked and can earn up to at least 48 hours each year unless the employer agrees to a higher amount.

Employees can carry over unused ESST into the next year up to 80 hours.

How does carryover work?

Example

Example

Week #	# of ESST hours available from 2024	# of hours worked per week	# of ESST hours accrued in 2025	TOTAL (carried over from 2024 + accrual from 2025)
Week 23	48	40	30.6666667	78.6666667
Week 24	48	40	32	80
Week 25	48	40	32	80
Week 26	48	40	32	80
Week 27	48	40	32	80
Week 28	28	20	32.6666667	60.6666667
Week 29	28	40	34	62
Week 30	28	40	35.33333333	63.33333333
Week 31	28	40	36.6666667	64.6666667
Week 32	28	40	38	66
Week 33	28	40	39.33333333	67.33333333
Week 34	28	40	40.6666667	68.6666667
Week 35	28	40	42	70
Week 36	28	40	43.33333333	71.33333333
Week 37	28	40	44.6666667	72.6666667
Week 38	28	40	46	74
Week 39	28	40	47.33333333	75.33333333
Week 40	28	40	48	76
Week 41	28	40	48	76

Front loading in lieu of ongoing accruals with carryover

Option 2. Front loading with pay out and no carryover:

- a minimum of **48 hours** of ESST is provided to an employee and made available for immediate use at the start of each year; and
- unused ESST hours are paid out at the end of the accrual year at the employee's hourly rate.

Option 3. Front loading with no pay out and no carryover:

- a minimum of **80 hours** of ESST is provided to an employee and made available for immediate use at the start of each year; and
- the ESST hours the employee did not use are not paid out at the end of the accrual year.

Case study: Independent smoothie makers

- Smoothie shop, employing mostly high school students, sent text message to their employees that considering the new law, they were reclassifying the workers as “independent contractors.”
- 13 employees with set schedule working exclusively out of the smoothie shop.
- Employees worked between 10 and three hours in a week.
- Employer agreed to classify workers as employees after DLI explained accrual.

Rate of pay

- Employers must provide employees who use ESST with pay equal to the base rate the employee earns from employment.
- Employees must be paid at least the highest applicable minimum wage (local, state or federal).

The base rate does not include:

- commissions;
- shift differentials;
- overtime;
- extra pay for working weekends, holidays or scheduled days off;
- bonuses; and
- tips or gratuities.

Other key details

- Notice of use
 - Foreseeable: Up to seven-day notice
 - Unforeseeable: Notify as soon as practicable
- Documentation
 - Employers cannot require reasonable documentation unless the employee has used ESST for more than three consecutive scheduled days
- Replacement workers
 - Employers are prohibited from making employees find replacement workers as a condition of using ESST.



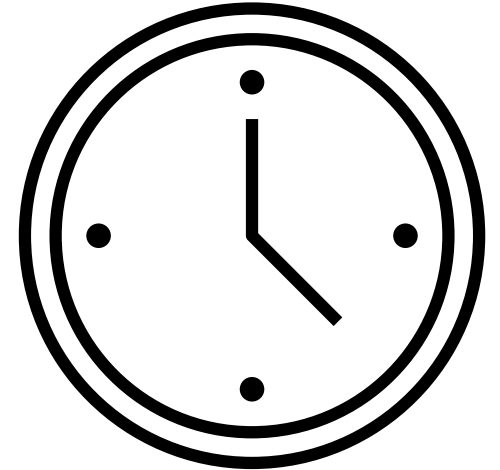
Case study: Gas station notes

- A convenience store and fuel station chain with locations across Minnesota was requiring employees to provide doctor's notes for one-day absences.
- Complainant provided text messages from their manager confirming the claim.
- Employer agreed to revise their ESST training materials and retrain managers about the law.

Increment of ESST use

Employees may use ESST in the same increments of time as they are paid, except employers:

- are not required to allow leave in increments smaller than 15 minutes.
 - For example, if an employee would like to use 3:07 of ESST, the employer may require 3:15 of ESST be used.
- cannot require employees to use more than four hours of ESST at once.



Increment of time: Sample scenarios

- Ibrahim needs to take sick leave for a doctor's appointment. His employer pays him in 30-minute increments. Ibrahim can request sick leave in 30-minute increments for his appointment, but his employer is not required to grant leave in increments smaller than 15 minutes, such as 10 minutes. If Ibrahim only needs two hours for his appointment, the employer cannot insist that he take an entire half-day (e.g., four hours) off when he only needs two hours.
- Hamda needs to take sick leave for a doctor's appointment. Hamda is an hourly employee whose employer pays wages in 15-minute increments. She can request to use ESST in 15-minute increments, up to as long as is needed for her absence.

Increment of time: Sample scenarios, continued

- David's son has influenza and David needs to stay home in the morning to care for him. David is an exempt employee who is paid a salary. David's employer can require David use ESST in four-hour increments (half day). In this case, David uses four hours of ESST and returns to work in the afternoon.

Employer responsibilities: Notice to employees

By Jan. 1, 2024, (or date of hire if later), employers must provide the ESST notice to employees 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.

This notice needs to be provided to employees in English and the primary language of the employee. DLI currently has the sample ESST notice available in 22 languages and employers can request translation in additional languages as needed at no cost.

Employer responsibilities: Documenting ESST hours

At the end of each pay period employers must provide employees with:

1. the total number of ESST hours available for the employee to use; and
2. the total number of ESST hours that the employee used during that pay period.

Employers can choose how to provide this information, such as on an earnings statement or through an electronic system, including their company's online portal, timekeeping software or other accessible systems. If the information is provided electronically, employers must ensure that employees have access to a computer during their regular working hours to review and print their sick and safe time details.

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

Case study: Missing migrant hours

- Employer is a fruit and vegetable processing company, hiring migrant workers on a seasonal basis.
- Intake alleged that employees did not know how much ESST they had available to them.
- While the employer did have an ESST program, the migrant workers had limited access to employer-owned computers making an electronic system less practical.
- Employer agreed to put accruals on paystubs, since it was a regular point of communication.

Retaliation prohibited

- **Generally:** An employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce or otherwise retaliate or discriminate against a person because the person has exercised/attempted use of ESST or made a complaint/filed an action related to enforcement of ESST.
- **Absence control policies/attendance points:** It shall be unlawful for an employer's absence control policy or attendance point system to count ESST taken under this act as an absence that may lead to or result in retaliation or any other adverse action.
- **Citizenship/immigration status:** It shall be unlawful for an employer or any other person to report or threaten to report the actual or suspected citizenship or immigration status of a person or their family member to a federal, state or local agency for exercising or attempting to exercise any right protected under this act.

ESST application to other paid time off (Jan. 1, 2025)

- If an employer provides employees with paid time off (PTO) that is more than the amount required under the ESST law for absences due to personal illness or injury, the additional PTO must meet the same requirements as the ESST hours, other than the ESST accrual requirements.
 - For example, if an employee receives 50 hours of PTO in addition to the minimum requirement of 48 ESST hours per year, the employer must follow the ESST requirements about notice, documentation, anti-retaliation, replacement workers and more for the PTO hours in addition to the ESST hours.
- Employers can still apply their notice and documentation requirements that were in effect as of Dec. 31, 2023, when employees use PTO accrued on or before that date. However, employers cannot require employees to use PTO accrued on or after Jan. 1, 2024, before using PTO accrued before that date.

Other ESST updates

- Weather related workplace closure exemption created for emergency personnel, corrections facility staff and public employees with a commercial driver's license.
- Remedies for ESST violations:
 - Employers may be liable for the amount of ESST that should have been provided or could have used, plus an equal amount as liquidated damages.
 - If the exact ESST hours owed is unclear, employers are liable for 48 hours each year ESST was not provided, plus an equal amount as liquidated damages.

ESST rulemaking

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RULEMAKING DOCKET FOR MINNESOTA RULES, CHAPTER 5200

Earned sick and safe time, Minnesota Rules, part 5200.1200

The Minnesota Department of Labor and Industry (DLI) requests comments on its possible adoption of a new part of Minnesota Rules, chapter 5200, for rules governing earned sick and safe time (ESST). The rules are intended to provide guidance to employers and employees regarding the application of the ESST law. ESST is paid leave that employers covered by the law must provide to defined employees that can be used for certain reasons, including when an employee is sick, to care for a sick family member or to seek assistance if an employee or their family member has experienced domestic abuse, sexual assault or stalking.

Published notices and comment periods

The request for comments was published in the *State Register* (page 79) on July 22, 2024. The first comment period ran from July 22, 2024, to Sept. 6, 2024. That comment period is now closed. A second comment period will be provided at a later date to receive further feedback from the public.

Resources

- DLI's ESST page: sickleave.mn.gov (includes FAQs, sample employee notice, fact sheet, workplace poster, informational videos)
- Call Labor Standards at 651-284-5075 or email esst.dli@state.mn.us
- Stay up to date with the *Wage and Hour Bulletin*: dli.mn.gov/bulletin
- Sign up for additional Labor Standards webinars: dli.mn.gov/events



The screenshot shows a web browser window displaying the Minnesota Department of Labor Standards website. The page title is "EARNED SICK AND SAFE TIME". The left sidebar contains a navigation menu with the following items: APPRENTICESHIP AND DUAL TRAINING, CODES AND LAWS, CONSTRUCTION, CONTRACTOR REGISTRATION, ELECTRICAL CONTRACTORS, ELEVATOR CONTRACTORS, and EMPLOYMENT PRACTICES. Under EMPLOYMENT PRACTICES, there are links for "Age, hours restrictions", "Brochures and fact sheets about labor standards", and "Child labor laws". The main content area features a header "EARNED SICK AND SAFE TIME" and a large image showing a family, a woman wearing a face mask, and a doctor examining a child. Below the image, the text states: "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. Minnesota's current sick and safe leave law remains in effect until Dec. 31, 2023 and will be replaced by the new earned sick and safe time law on Jan. 1, 2024." Below this text is a section titled "What is sick and safe time?" and a red button that says "MINNESOTA PAID FAMILY AND MEDICAL LEAVE ►".