Department of Labor and Industry

Adopted Permanent Rules Relating to Earned Sick and Safe Time

5200.1200 DEFINITIONS.

Subpart 1. **Scope.** For the purposes of Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448, and parts 5200.1201 to 5200.1209, the following terms have the meanings given.

Subp. 2. **Accrual year.** "Accrual year" has the meaning given in Minnesota Statutes, section 181.9445, subdivision 11.

Subp. 3. **Qualifying purpose.** "Qualifying purpose" means an eligible reason for an employee to use earned sick and safe time as defined in Minnesota Statutes, section 181.9447, subdivision 1.

5200.1201 ACCRUAL YEAR.

Subpart 1. **Accrual year.** If an employer does not designate and clearly communicate the accrual year to each employee as required by Minnesota Statutes, section 181.9445, subdivision 11, the accrual year is a calendar year.

Subp. 2. **Changes to accrual year.** An employer must provide notice of a change to the start and end dates of an accrual year as part of the written notice of changes to employment terms required under Minnesota Statutes, section 181.032, paragraph (f), prior to the date the change takes effect. A change to the start and end dates of an accrual year must not negatively impact an employee's ability to accrue earned sick and safe time in accordance with Minnesota Statutes, section 181.9446.

5200.1202 HOURS WORKED.

Subpart 1. **Eligibility.** An employer must determine in good faith whether an employee is anticipated to perform work for at least 80 hours in a year for that employer in Minnesota pursuant to Minnesota Statutes, section 181.9445, subdivision 5. For the purposes of this

subpart, "good faith" means the employer, at a minimum, evaluated the employee's anticipated work schedule and location of hours worked in a manner that is not knowingly false or in reckless disregard of the truth. Employees anticipated to work or who actually work at least 80 hours in a year for that employer in Minnesota must receive earned sick and safe time in accordance with Minnesota Statutes, section 181.9446.

Subp. 2. **Determining hours worked.**

A. Parts 5200.0120 and 5200.0121 govern determinations of an employee's accrual of earned sick and safe time under Minnesota Statutes, section 181.9446, paragraph (a).

B. Notwithstanding item A, for an employee exempt from overtime requirements under United States Code, title 29, section 213(a)(1), who uses earned sick and safe time for an absence of a full work day, more sick and safe time hours cannot be deducted than the number of hours for which the employee is deemed to work for the purposes of accruing earned sick and safe time each work day under Minnesota Statutes, section 181.9446, paragraph (c).

Subp. 3. **Indeterminate shift.**

A. When an employee uses earned sick and safe time for an absence from a scheduled shift of an indeterminate length, such as a shift defined by business needs rather than a specific number of hours, the employer must deduct from the employee's available earned sick and safe time using only one of the following options:

(1) the hours worked by the replacement worker, if any;

(2) the hours worked by the employee in the most recent similar shift of an indeterminate length; or

(3) the greatest number of hours worked by a similarly situated employee, if any, who worked the shift for which the employee used earned sick and safe time.

B. For an employee who uses earned sick and safe time after beginning a shift of an indeterminate length, the employer must use the options in item A by deducting from the employee's available earned sick and safe time the amount associated with the selected option minus the hours already worked by the employee during the shift.

5200.1203 TIME CREDITED AND INCREMENTS OF ACCRUAL.

Subpart 1. **Crediting accrual.** For the purposes of Minnesota Statutes, section 181.9446, paragraph (a), earned sick and safe time must be credited to an employee for each pay period based on all hours worked no later than the regular payday after the end of each corresponding pay period. Earned sick and safe time is considered accrued when the employer credits the time to the employee.

Subp. 2. **Increment of time accrued.** An employer is not required to credit employees with less than hour-unit increments of earned sick and safe time accrued under Minnesota Statutes, section 181.9446, paragraph (a).

Subp. 3. **Rehire.** An employee rehired by the same employer within 180 days of the employee's separation from employment is entitled to a maximum reinstatement of 80 hours of previously accrued but unused earned sick and safe time under Minnesota Statutes, section 181.9448, subdivision 2, unless the employer agrees to a higher amount or an applicable statute, regulation, rule, ordinance, policy, contract, or other legal authority requires a greater amount of accrued but unused time off to be reinstated.

5200.1204 ACCRUAL AND ADVANCING METHODS.

Subpart 1. **Advancing hours.** For the purposes of Minnesota Statutes, section 181.9448, subdivision 1, paragraph (j), when an employer advances earned sick and safe time to an employee for the remainder of the accrual year:

A. the advanced amount of earned sick and safe time must be calculated at no less than the rate required in Minnesota Statutes, section 181.9446, paragraph (a);

B. employers are not required to advance more than 48 hours of earned sick and safe time, unless required by an applicable statute, regulation, rule, ordinance, policy, contract, or other legal authority; and

C. if the advanced amount is less than the amount the employee would have accrued based on the actual hours worked, the employer must provide additional earned sick and safe time to make up the difference within 15 calendar days of the employee's actual hours worked surpassing the number of hours the employer anticipated the employee would work when it advanced earned sick and safe time.

Subp. 2. **Changing methods.** Any change to an employer's method of providing earned sick and safe time to an employee under Minnesota Statutes, section 181.9446, paragraph (a) or (b), must be communicated to the employee in writing and is not effective until the first day of the next accrual year. An employer must provide notice of a change to the accrual method as part of the written notice of changes to employment terms required under Minnesota Statutes, section 181.032, paragraph (f). If an employer fails to provide timely notice of a change to the accrual method as required by this subpart, the prior accrual method remains in effect, unless the employee agrees otherwise.

Subp. 3. **No additional accrual necessary.** When an employer provides an employee with earned sick and safe time for the accrual year under Minnesota Statutes, section 181.9446, paragraph (b), clause (2), the employer is not required to provide the employee with any additional accrual under Minnesota Statutes, section 181.9446, paragraph (a).

5200.1205 EMPLOYEE USE.

Subpart 1. **No required use.** It is an employee's right to use earned sick and safe time for a qualifying purpose. An employer must not require an employee to use earned sick and safe time.

Subp. 2. **Unprotected leave.** An employee's leave is not subject to the protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448, when the employee requests not to use earned sick and safe time for an absence from work.

5200.1206 INCENTIVES.

If a bonus, reward, or other incentive is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance and the employee has not met the goal due to use of earned sick and safe time, then the incentive may be denied, unless otherwise paid to employees on any other leave status.

5200.1207 REASONABLE DOCUMENTATION.

For uses of earned sick and safe time for which an employer may require reasonable documentation, an employee who does not provide reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subdivision 3, is not subject to the protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448. Any requirement for reasonable documentation must be clearly communicated to the employee and the employee must be given a reasonable amount of time to provide reasonable documentation.

5200.1208 MISUSE OF EARNED SICK AND SAFE TIME.

Subpart 1. **Misuse.** Misuse occurs when an employee uses earned sick and safe time for a purpose not covered by Minnesota Statutes, section 181.9447, subdivision 1. Misuse is not subject to the protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448.

Subp. 2. **Pattern or clear instance of suspected misuse.** Notwithstanding the timeline provided in Minnesota Statutes, section 181.9447, subdivision 3, paragraph (a), an employer is permitted to require reasonable documentation from an employee when there is a pattern

or clear instance of suspected misuse by the employee. A pattern or clear instance of suspected misuse includes, but is not limited to:

A. an employee repeatedly used earned sick and safe time on their scheduled work day immediately before or after a scheduled day off, vacation, or holiday;

B. an employee repeatedly used increments of earned sick and safe time of less than 30 minutes at the start or end of a scheduled shift;

C. an employee used earned sick and safe time on a day for which the employer previously denied the employee's request to take other paid leave; or

D. documentation or other evidence that conflicts with the employee's claimed use of earned sick and safe time.

An employer that requires reasonable documentation under this subpart must do so in accordance with Minnesota Statutes, section 181.9447, subdivision 3, paragraphs (b) to (f). An employer that requires reasonable documentation in accordance with this subpart is not retaliating against an employee under Minnesota Statutes, section 181.9447, subdivision 6.

Subp. 3. **No restriction on use.** An employer must not deny an employee the use of earned sick and safe time for a qualifying purpose based on previous misuse of earned sick and safe time by the employee or the employer's suspicion that the employee may misuse earned sick and safe time. However, misuse of earned sick and safe time is not subject to protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448, and may be subject to discipline by the employer.

5200.1209 MORE GENEROUS SICK AND SAFE TIME POLICIES.

Subpart 1. **Excess paid time off.** Excess paid time off and other paid leave made available to an employee by an employer under Minnesota Statutes, section 181.9448, subdivision 1, paragraph (a), is subject to the minimum standards and requirements provided

in Minnesota Statutes, sections 181.9445 to 181.9448, except for section 181.9446, only when the leave is used for a qualifying purpose.

Subp. 2. **Salary continuation benefits.** For the purposes of Minnesota Statutes, section 181.9448, subdivision 1, paragraph (a), "other salary continuation benefits" includes Minnesota Paid Leave under Minnesota Statutes, chapter 268B.