

1.1 **Department of Labor and Industry**

1.2 **Proposed Permanent Rules Relating to Earned Sick and Safe Time**

1.3 **5200.1200 DEFINITIONS.**

1.4 Subpart 1. **Scope.** For the purposes of Minnesota Statutes, sections 177.50 and
1.5 181.9445 to 181.9448, and parts 5200.1201 to 5200.1207, the following terms have the
1.6 meanings given.

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

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

1.12 Subp. 4. **Work day.** "Work day" means a consecutive period of time not greater than
1.13 24 hours.

1.14 **5200.1201 ACCRUAL YEAR.**

1.15 Subpart 1. **Accrual year.** If an employer fails to designate and clearly communicate
1.16 the accrual year to each employee as required by Minnesota Statutes, section 181.9445,
1.17 subdivision 11, the accrual year is a calendar year.

1.18 Subp. 2. **Changes to accrual year.** An employer must provide a revised written notice
1.19 pursuant to Minnesota Statutes, section 181.9447, subdivision 9, to all affected employees
1.20 of any change to the accrual year for the employee prior to the date the change takes effect.
1.21 If an employee has not received timely revised written notice pursuant to this subpart, then
1.22 the employee's designated accrual year remains unchanged, unless the employee agrees
1.23 otherwise. A change in accrual year must not negatively impact an employee's ability to
1.24 accrue earned sick and safe time in accordance with Minnesota Statutes, section 181.9446.

2.1 **5200.1202 HOURS WORKED.**

2.2 Subpart 1. Location of hours worked. An employee accrues earned sick and safe
2.3 time in accordance with Minnesota Statutes, section 181.9446, paragraph (a), as follows:

2.4 A. if the employer anticipates the employee will work more than 50 percent of
2.5 their hours for that employer in Minnesota in an accrual year, then all the employee's hours
2.6 worked count toward their accrual of earned sick and safe time regardless of location;

2.7 B. if the employer anticipates the employee will work 50 percent or less of their
2.8 hours for that employer in Minnesota in an accrual year, then only the employee's hours
2.9 worked in Minnesota count toward their accrual of earned sick and safe time;

2.10 C. if a change in circumstances during the accrual year, such as a change in work
2.11 location or duties, will result in the employee working:

2.12 (1) more than 50 percent of their hours for that employer in Minnesota in the
2.13 accrual year; or

2.14 (2) 50 percent or less of their hours for that employer in Minnesota in the
2.15 accrual year;

2.16 then the employer must provide the employee with accrual in accordance with items A or
2.17 B, whichever is applicable, effective on the date of the change in circumstances. Any accrued
2.18 but unused earned sick and safe time remains available for the employee to use; and

2.19 D. for the purposes of this subpart, an employee who is teleworking is considered
2.20 to be working in the state from which they telework.

2.21 Subp. 2. Determining hours worked per work day. Parts 5200.0120 and 5200.0121
2.22 govern determinations of:

2.23 A. an employee's accrual of earned sick and safe time each work day pursuant to
2.24 Minnesota Statutes, section 181.9446, paragraph (a); and

3.1 B. the amount of time for which an employer deducts earned sick and safe time
3.2 from an employee's accrual bank for each use of earned sick and safe time each work day.

3.3 Subp. 3. Indeterminate shift. When an employee uses earned sick and safe time for
3.4 an absence from a scheduled shift of an indeterminate length, the employer must only deduct
3.5 from the employee's accrued earned sick and safe time as follows:

3.6 A. if a replacement worker is used to cover the employee's shift, the hours worked
3.7 by the replacement worker;

3.8 B. if there is not a replacement worker, but there are one or more similarly situated
3.9 employees, then either:

3.10 (1) the average hours worked of other similarly situated employees who
3.11 worked the same shift for which the employee used earned sick and safe time; or

3.12 (2) the greatest hours worked by a similarly situated employee who worked
3.13 the shift for which the employee used earned sick and safe time; or

3.14 C. if no replacement worker is used and there are no similarly situated employees,
3.15 then the hours worked in the most recent similar shift of an indeterminate length worked
3.16 by the employee.

3.17 **5200.1203 TIME CREDITED AND INCREMENTS OF ACCRUAL.**

3.18 Subpart 1. Processing and crediting accrual. Accrued earned sick and safe time
3.19 must be credited to an employee no later than the end of each pay period. Earned sick and
3.20 safe time is considered accrued when the employer processes and credits the time to the
3.21 employee at the end of each pay period.

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

4.1 Subp. 3. **Rehire.** An employee rehired by the same employer within 180 days of
4.2 separation is entitled to a maximum reinstatement of 80 hours of previously accrued but
4.3 unused earned sick and safe time, unless an applicable statute, regulation, rule, ordinance,
4.4 policy, contract, or other legal authority requires a greater amount of accrued but unused
4.5 time off to be reinstated.

4.6 **5200.1204 ACCRUAL AND ADVANCING METHODS.**

4.7 Subpart 1. **Advancing hours.**

4.8 A. When an employee begins employment, an employer is permitted to advance
4.9 earned sick and safe time to an employee based on the number of hours the employee is
4.10 anticipated to work for the remaining portion of the accrual year and calculated at no less
4.11 than the rate required in Minnesota Statutes, section 181.9446, paragraph (a). The advanced
4.12 amount must be no less than the amount the employee is anticipated to accrue based on the
4.13 employee's actual hours worked for the remainder of the accrual year. Under this subpart,
4.14 employers are not required to advance more than 48 hours of earned sick and safe time,
4.15 unless required by an applicable statute, regulation, rule, ordinance, policy, contract, or
4.16 other legal authority.

4.17 B. If the advanced amount is less than the amount the employee would have
4.18 accrued based on the actual hours worked for the remainder of the accrual year, the employer
4.19 must provide additional earned sick and safe time to make up the difference between the
4.20 advanced amount and the actual accrued amount within 15 days of the actual accrued amount
4.21 surpassing the advanced amount.

4.22 Subp. 2. **Changing methods.** Any change to an employer's method of providing
4.23 earned sick and safe time hours to an employee pursuant to Minnesota Statutes, section
4.24 181.9446, paragraph (a) or (b), must be communicated to the employee in writing and is
4.25 not effective until the first day of the next accrual year. An employer must provide a revised
4.26 notice pursuant to Minnesota Statutes, section 181.9447, subdivision 9, to all affected

5.1 employees of any change to the accrual methods prior to the date the change takes effect.
5.2 An employer is permitted to include notice of changes to the accrual method as part of the
5.3 written notice of changes to employment terms provided under Minnesota Statutes, section
5.4 181.032, paragraph (f). If an employer fails to provide timely notice of a change to the
5.5 accrual method as required by this subpart, the prior accrual method remains in effect, unless
5.6 the employee agrees otherwise.

5.7 Subp. 3. **No additional accrual necessary.** When an employer is providing an
5.8 employee with earned sick and safe time pursuant to Minnesota Statutes, section 181.9446,
5.9 paragraph (b), clause (2), the employer is not required to provide the employee with accrual
5.10 pursuant to Minnesota Statutes, section 181.9446, paragraph (a).

5.11 **5200.1205 EMPLOYEE USE.**

5.12 Subpart 1. **Required use.** It is an employee's right to use earned sick and safe time
5.13 for a qualifying purpose. An employer must not require an employee to use earned sick and
5.14 safe time.

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

5.18 **5200.1206 MISUSE OF EARNED SICK AND SAFE TIME.**

5.19 Subpart 1. **Misuse.** An employee's use of earned sick and safe time for a purpose not
5.20 covered by Minnesota Statutes, section 181.9447, subdivision 1, is not subject to the
5.21 protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448.

5.22 Subp. 2. **Pattern of Misuse.** Notwithstanding the timeline provided in Minnesota
5.23 Statutes, section 181.9447, subdivision 3, paragraph (a), an employer is permitted to demand
5.24 reasonable documentation from an employee when there is a pattern of misuse by the

6.1 employee. A pattern of misuse occurs when, for a claimed unforeseeable use pursuant to
6.2 Minnesota Statutes, section 181.9447, subdivision 2:

6.3 A. an employee routinely uses earned sick and safe time on their scheduled work
6.4 day immediately before or after a weekend, vacation, or holiday; or

6.5 B. an employee routinely uses increments of earned sick and safe time of less
6.6 than 30 minutes at the start of a scheduled shift.

6.7 An employer's demand for reasonable documentation must be in accordance with
6.8 Minnesota Statutes, section 181.9447, subdivision 3, paragraphs (b) to (f). An employer
6.9 that requests reasonable documentation in accordance with this subpart is not retaliating
6.10 against an employee pursuant to Minnesota Statutes, section 181.9447, subdivision 6.

6.11 Subp. 3. **No restriction on use.** An employer must not deny an employee earned sick
6.12 and safe time based on previous misuse of earned sick and safe time by the employee or
6.13 the employer's suspicion that the employee may misuse earned sick and safe time.

6.14 **5200.1207 MORE GENEROUS SICK AND SAFE TIME POLICIES.**

6.15 Excess paid time off and other paid leave made available to an employee by an employer
6.16 pursuant to Minnesota Statutes, section 181.9448, subdivision 1, paragraph (a), is subject
6.17 to the minimum standards and requirements provided in Minnesota Statutes, sections
6.18 181.9445 to 181.9448, except for section 181.9446, only when the leave is being used for
6.19 a qualifying purpose.