

February 5, 2026

The Honorable Judge Megan McKenzie
Administrative Law Judge
Court of Administrative Hearings

**In the Matter of the Proposed Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200;
Revisor's ID Number R-04877; CAH Docket No. 25-9001-40129; Public Comments and Department Responses**

Dear Judge McKenzie:

The Minnesota Department of Labor and Industry ("Department") has reviewed each comment submitted during the January 21 and 22, 2026, public hearings and subsequent comment period on the above-referenced rulemaking. The Department received three comments during the hearings, two of which noted opposition to proposed rule 5200.1202, subp. 2, regarding location of hours worked. One of these comments was resubmitted during the post-hearing comment period via email to the Department.¹ The third comment expressed no opposition to the Department's proposed rules. The Department provides responses to the two comments in opposition herein.

Comment from Associated Builders and Contractors of Minnesota and North Dakota

The Associated Builders and Contractors of Minnesota and North Dakota ("ABC") noted several concerns about proposed rule 5200.1202, subp. 2. ABC asserted that the unpredictable, project-based nature of construction work will create regular occurrences in which its members must reassess employee ESST accrual based on significant changes in circumstances, pursuant to item C of the proposed subpart, which will create administrative burdens for these construction contractors. Notably, the word "significant" acts as a key qualifier by limiting the situations in which item C is applicable. Item C is further limited by the context of the rule, which is only concerned with determining whether an employee works more than 50% of their time in Minnesota or another state. Short-term changes in work location are unlikely to require an analysis under item C.

While the Department has acknowledged in the Statement of Need and Reasonableness ("SONAR") that this subpart will "affect employers with ESST-eligible employees who regularly work in other states," the Department concluded the "the benefits to these multi-state employees outweigh any potential costs or burdens to the affected employers."² Further, without the significant change in circumstances provision, construction contractors and other similar employers would not have the flexibility to adjust accruals in accordance with the changing work circumstances of their employees. The proposed subpart's "significant change in circumstances" provision allows for upward and downward ESST accrual adjustments.

¹ The email and comment are attached to this letter. The letter reflects the commenter's testimony in the hearing transcript on January 21, 2026, pages 30-36.

² Exhibit D, Statement of Need and Reasonableness, DLI0054-55.

Additionally, the Department notes that under Minn. Stat. § 181.9446(a), ESST accrual remains capped at 48 hours annually unless the employer agrees to more. An employee reaches 48 ESST hours after 1,440 hours worked at the statutory accrual rate of one ESST hour for every 30 hours worked. A full-time employee (i.e., 40 hours per week, 52 weeks per year) who works half of their hours in Minnesota accrues 34 ESST hours based on hours worked in Minnesota alone. This means that, for employees anticipated to work close to 50% of their hours in Minnesota, the difference in ESST accrual between counting all hours worked or Minnesota-only hours amounts to a difference of, at most, 14 ESST hours, which is less than two full days' leave.

ABC is also concerned that the good faith standard set forth in item D of the proposed subpart is subjective. While the Department respectfully disagrees with that framing, more importantly, the good faith standard allows employers a safe harbor when their good faith projection of an employee's location of hours worked turns out to be inaccurate. In those situations, so long as the employer acted in good faith, it is not required to make retroactive adjustments to the employee's ESST accrual.³ The good faith standard requires employers to make a reasonable forecast of where the employee will work over the next accrual year, taking into account only those facts the employer is aware of at the time the forecast is made.⁴

ABC cited other concerns about the cost of compliance with this proposed subpart related to "ESST recalculations" and tracking location of hours worked in multiple states. ABC asserts that, currently, location of hours worked data is "not necessarily being calculated and aggregated in a way that fits this proposed rule," but does not provide specifics about how such data would be unsuitable in a good faith determination under item B or C of the proposed subpart. First, the proposed subpart does not require "recalculations." Retroactive changes to accrual are not required so long as employers who limited ESST accrual to only hours worked in Minnesota do so in good faith as prescribed by the proposed subpart.⁵ Further, significant changes in circumstances under item C that result in accrual adjustments are effective the date of the change in circumstances; no recalculation of past hours worked based on location for ESST accrual purposes is required under that provision.⁶

Second, the Department's understanding is that contractors already track hours worked by employee, project, and location, whether as a best practice or to meet other legal obligations.⁷ Therefore, the current data collected by contractors likely has some utility in a good faith analysis, along with the contractor's knowledge of its upcoming projects and project schedules. Further, ABC's preferred rule (i.e., only allowing ESST accrual for

³ See Exhibit D, Statement of Need and Reasonableness, DLI0039 ("The good-faith standard was included so that employers do not have to make retroactive adjustments to ESST accruals if their determination ultimately turns out to be incorrect based on the locations in which the employee actually ends up working during the accrual year, so long as the employer conducted the evaluation in good faith.").

⁴ See Exhibit K3, Department Responses to Public Comments, DLI0180 ("Therefore, an employer is not required to take into account facts that they are not aware of, or do not have a reason to be aware of, when they make a good faith determination.").

⁵ *Supra*, note 2.

⁶ See Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, DLI0195 ("Any significant change in circumstance that results in the employee accruing earned sick and safe time differently under this subpart is effective the date of the change in circumstances.").

⁷ See Exhibit D, Statement of Need and Reasonableness, DLI0068 ("After consideration, it is unlikely that the proposed subpart would significantly increase costs to a small business because the necessary data are already tracked for payroll purposes. For businesses operating in multiple states, primary work location must already be documented for tax and unemployment insurance reporting purposes.").

hours worked in Minnesota) would also require tracking of hours worked by project and location. Therefore, to the extent the proposed subpart would require any new data to be collected or compiled, that requirement does not differ from what would be required under ABC's preferred rule.⁸

ABC cited other cost concerns related to "raising bid costs" by factoring in ESST to fringe benefits when bidding projects and confusion about whether the costs of ESST should be accounted for in "out of state bids that must now account for the Minnesota work mandate." This would only impact employees who work more than 50 percent of their time in Minnesota, and the impact is limited by the statutory annual maximum ESST accrual of 48 hours. Additionally, when the ESST law became effective, contractors working in both Minnesota and other states were already subject to ESST requirements. The Department takes no position on bidding practices in other states and points to item G of the proposed subpart, which allows other states to prohibit application of the proposed subpart if they so choose.⁹

Finally, ABC asserts that this proposed subpart "creates a high risk of overlapping and duplicative leave obligations" for construction employers operating in multiple states. The Department responded to this issue in similar prior comments and refers to those responses here.¹⁰

Comment submitted by Minnesota Chamber of Commerce

The Minnesota Chamber of Commerce ("the Chamber") noted several concerns about proposed rule 5200.1202, subp. 2. First, the Chamber asserts that the proposed rule is an "expansion beyond existing authority under Minnesota Statute 181.9446, governing accrual of earned sick and safe time, and a departure of existing guidance issued" by the Department.¹¹ Second, the Chamber claims "any ambiguities as to whether hours worked outside of the state count towards ESST accrual should be addressed by the legislature."¹² Third, the Chamber believes "extraterritorial application create[s] compliance challenges . . . challenges jurisdictional boundaries," and "will cause potential legal conflicts."¹³ Finally, the Chamber claims the rule unfairly compels employers to go above the minimum requirements established under the ESST statutes.

The Department responded to many of these concerns in similar prior comments and refers to those responses here.¹⁴ Regarding the claim that the proposed rule compels employers to go above the minimum requirements or standards established by statute, the Department disagrees that the proposed subpart does so. Nothing in the statute limits ESST accrual to only hours worked in Minnesota. Instead, the statute is silent, leaving an open question to be resolved. Contrary to the Chamber's suggestion that ambiguities must be resolved by the

⁸ See Exhibit K3, Department Responses to Public Comments, DLI0182-83 (addressing the same concern in a prior submitted comment).

⁹ See Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, DLI0196 ("nothing in this subpart is to be construed as requiring compliance or imposing obligations for work performed in a state or locality outside of Minnesota where such benefits are expressly prohibited or preempted by law.").

¹⁰ See Exhibit K3, Department Responses to Public Comments, DLI0183-84.

¹¹ Hearing Transcript, January 21, 2026, page 27.

¹² *Id.* at 29.

¹³ *Id.* at 30.

¹⁴ See Exhibit K3, Department Responses to Public Comments, DLI0181-82 (addressing the Department's previous guidance, the perceived conflict with section 181.9446, and the Department's authority to adopt the proposed rules).

Legislature, rulemaking is intended to clarify ambiguities and fill in gaps in the statute.¹⁵ The Legislature granted the Department rulemaking authority to carry out this purpose.¹⁶

Additionally, as explained in the SONAR, employees who predominantly work in Minnesota are “clearly subject to employment laws in Minnesota . . . and it does not follow that the employee’s ESST accrual should be limited based on hours worked outside of Minnesota.”¹⁷ Ultimately, the proposed rule “is a reasonable method of ensuring eligible employees receive the full extent of ESST to which they are entitled.”¹⁸

Thank you for your consideration of these comments and the Department’s responses.

Sincerely,



Byron Millea

Attorney

Office of General Counsel

Department of Labor and Industry

Enclosure: Email and letter from ABC

¹⁵ See e.g., Minn. Stat. § 14.02, subd. 4 (defining “rule,” in part, as “adopted to implement or make specific the law enforced or administered by that agency”); *St. Otto’s Home v. Dep’t of Human Servs.*, 437 N.W.2d 35, 42 (Minn. 1989) (“All rules, including interpretative rules, must be adopted in accordance with the Minnesota Administrative Procedure Act.”).

¹⁶ Minn. Stat. § 177.50, subd. 6.

¹⁷ Exhibit D, Statement of Need and Reasonableness, DLI0056-57.

¹⁸ *Id.* at DLI0038.

From: [Joel Hanson](#)
To: [Conley, Krystle \(DLI\)](#)
Subject: ALJ Comments
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Krystle,

Please see attached a written version of oral comments I made during the ALJ ESST rules hearing on January 21. I am submitting these during the written comment period for the record.

Thanks!

Joel



Joel Hanson

Director of Government & Public Affairs, ABC MN/ND

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January 21, 2026

RE: Proposed ESST Rules – Location of Hours Worked (5200.1202)

Dear Judge McKenzie,

These comments are submitted on behalf of the members of Associated Builders and Contractors of Minnesota and North Dakota (ABC MN/ND). We are a construction industry trade association representing more than 350 merit shop contractors who collectively employ over 20,000 construction professionals across Minnesota, North Dakota, and the country.

As employers in the State of Minnesota, we have concerns with the Minnesota Department of Labor and Industry's (DLI) proposed Minnesota Rules, 5200.1202, governing the location of hours worked related to earned sick and safe time (ESST). Specifically, our concerns are regarding the real-world impact that the proposed "location of hours worked" rule will have on construction employers who operate in multiple states, and why despite the Department's best intentions, this rule creates operational, legal, and compliance problems that are particularly acute in our industry.

The construction industry is fundamentally unique when compared to other sectors of the economy. When it comes to performing actual construction work, our members generally do not operate from a single office or a fixed location. Work is project-based, mobile, seasonal, and often weather-dependent. Employees may work on multiple jobsites across state lines in a single year or even within the same pay period. These shifts are not promotions, transfers, or reassignments in the traditional sense; they are simply how construction work functions.

The proposed rule's 50-percent threshold, combined with the requirement to reassess accrual based on "significant changes in circumstances," assumes a level of predictability that simply does not exist in construction. Project timelines change. Jobs start late or end early. Crews are moved in response to supply delays, inspections, weather events, or customer demands. None of this reflects a meaningful change in the employment relationship, yet under this rule, each shift risks triggering a new compliance calculation.

DLI suggests that this burden is mitigated by a "good faith" standard. Respectfully, good faith does not reduce administrative complexity; it merely shifts legal risk. Employers are still required to make individualized determinations, monitor fluctuating work patterns, document those judgments, and defend them later if challenged. For construction employers with hundreds of field employees moving across jobsites, this is not a minor task; it is a continuous compliance exercise layered on top of already complex multi-state wage, tax, and labor requirements. Further, a "good faith" standard is subjective. One person's good faith could be another person's malfeasance. However, the location of hours worked by an individual employee is not subjective, it's objective with a definition. As such, in regard to complying with the 50-percent threshold, the department is establishing a subjective standard for an objective issue. This does not mitigate the burden on the employer, but rather makes it less clear and adds even more risk from a compliance perspective.

DLI also states that it does not anticipate large businesses being especially burdened. That conclusion does not reflect the construction industry. Many of our members are small to mid-sized contractors, not multinational corporations with centralized HR systems. These employers already track certified payrolls, prevailing wage requirements, apprenticeship ratios, and multi-state tax withholding. Adding employee-by-employee ESST recalculations based on percentage-of-time thresholds is not absorbed cost-free; it increases overhead, increases the risk of error, and increases exposure to enforcement actions. Further, while the department argues that the location of hours worked is already being tracked by employers, that data is not necessarily being calculated and aggregated in a way that fits this proposed rule. As such, this rule will add costs to employers in order to track the location of hours worked in multiple states. Additionally, the construction industry is somewhat unique in that it works on a project-by-project bidding process. When bidding on a project, contractors account for the cost of an employee's labor, which is their hourly wage and their fringe benefits (health insurance, sick time, etc.). By requiring employers to account for Minnesota's ESST law outside of our state, it will have the impact of raising bid costs, putting contractors in the unclear position of determining where to account for those costs – in Minnesota bids or in the out of state bids that must now account for the Minnesota work mandate.

Most concerning, this rule creates a high risk of overlapping and duplicative leave obligations. Construction employers operating in multiple states already comply with different paid leave laws in those individual jurisdictions (whether those be state or municipal) and each with its own accrual rules, caps, and definitions. By counting hours worked outside Minnesota toward Minnesota ESST accrual, this rule invites double counting and conflicting mandates, forcing employers to provide leave benefits untethered from where the work is actually performed.

DLI characterizes this approach as a fair balance. From our perspective, it crosses an important line. It effectively extends Minnesota's leave requirements beyond its borders without clear legislative or legal authorization, placing employers in the position of reconciling competing state laws with no safe harbor.

A simpler, more workable, and statutorily accurate approach exists; and it is the one employers have relied on to date: ESST accrual based on hours worked in Minnesota. This standard aligns with the underlying statute ([M.S. 2025 Sec. 181.9445, Subd. 5](#)), existing DLI guidance provided to employers in [their FAQs](#), respects jurisdictional boundaries, and provides certainty for employers and employees alike. If broader extraterritorial application is intended, that policy choice belongs with our state and federal elected officials, not through DLI administrative rulemaking.

In closing, we urge that 5200.1202 be amended to reflect the realities of multi-state construction work and to avoid imposing a compliance framework that is unworkable in practice, legally uncertain, and inconsistent with the structure of the ESST statute.

Thank you for the opportunity to provide these comments.

Joel Hanson

Director of Government & Public Affairs
Associated Builders and Contractors of MN/ND