



Earned sick and safe time law updates: What's new for workers and employers

Minnesota Department of Labor and Industry

Labor standards, wage and hour agencies in Minnesota

Minnesota Department of Labor and Industry, Labor Standards

- dli.mn.gov
- 651-284-5075

U.S. Department of Labor, Wage and Hour Division

- dol.gov/whd
- 612-370-3341

Minnesota Attorney General's Office

- ag.state.mn.us
- 651-296-3353

St. Paul, Labor Standards Enforcement and Education Division

- stpaul.gov/departments/human-rights-equal-economic-opportunity/labor-standards-enforcement-and-education
- 651-266-8900

Minneapolis, Labor Standards Enforcement Division

- minneapolismn.gov/government/departments/civil-rights/labor-standards-enforcement
- 612-673-3012

Labor and Industry business areas

- Apprenticeship Minnesota
- Youth Skills Training
- Construction Codes and Licensing Division
- Labor Standards
- Minnesota OSHA (MNOSHA) Compliance
- MNOSHA Workplace Safety Consultation
- Projects and planning
- Workers' Compensation Division



Labor Standards Division

- Ensures workers are paid fairly, enforce workplace rights and help prevent employment law violations.
- Provide guidance on wage and hour issues, including [earned sick and safe time](#), [child labor](#), [overtime](#), [pregnancy and parental rights](#), [retaliation](#), [worker misclassification](#) and [more](#).



Think about it

What is Minnesota's state tree?

- a. Red pine
- b. Maple
- c. Western white pine
- d. Birch

Agenda

- **Earned sick and safe time (ESST) overview**
 - Steve Aggergaard
- **ESST versus Minnesota Paid Leave**
 - Dave Skovholt
- **ESST administrative rules**
 - Victor Carmona
- **Responses to pre-submitted questions**

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.

Think about it #1

How much earned sick and safe time is a Minnesota employee entitled to under Minnesota law?

- a. 20 hours every year
- b. One hour for every 30 hours worked, up to 48 hours in one year
- c. 1 hour each week

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**.

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.

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

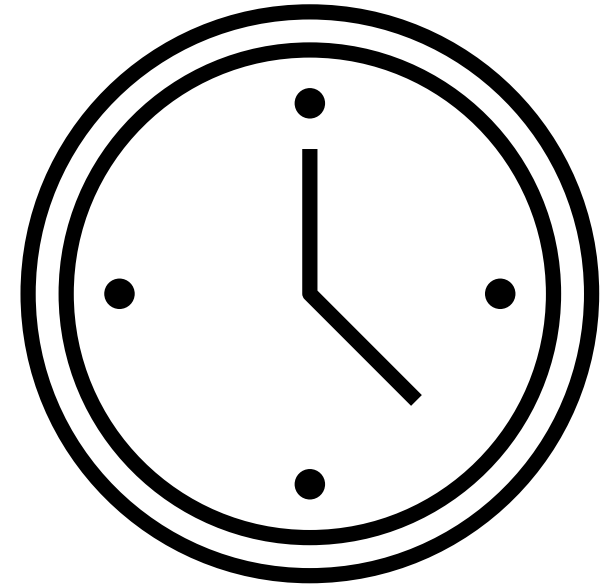
- Notice of use:
 - Foreseeable: Up to seven-day notice
 - Unforeseeable: Notify as soon as reasonably required by the employer
- Documentation:
 - Employers cannot require reasonable documentation unless the employee has used ESST for more than two consecutive scheduled days
- Replacement workers:
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



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.



Employer responsibilities: Notice to employees

By date of hire, 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 36 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.

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.

Think about it #2

What does ESST cover that is not covered by Minnesota Paid Leave?

- a. Caring for family
- b. Flat tire
- c. Bereavement leave
- d. Caring for pets

ESST versus Paid Leave

	ESST	Paid Leave
Qualifying reasons	Medical, caring, safety + • Closings: Employee's workplace or their family member's school or place of care closes due to weather or a public emergency • Communicable disease: When an employee or a family member is at risk of infecting others with a communicable disease • Bereavement: Arrange or attend a funeral or memorial or address financial or legal matters that arise after the death of a family member	Medical, caring, safety + • Parental Leave: Bond with a new child after birth, foster or adoption • Active duty: Family member on active duty or notified of impending offer
Amount of leave each year	An employee earns one hour of leave for every 30 hours worked and can earn up to 48 hours each year.	An employee is eligible for a maximum of 12 weeks of family leave, 12 weeks of medical leave, or a combination of the two not exceeding 20 weeks in a benefit year

ESST versus Paid Leave, continued

	ESST	Paid Leave
Payment during leave	Source: An employee on earned sick and safe time is paid by their employer Rate: At the employee's base rate	Source: An employee is paid a benefit by the state Rate: Partial wage replacement
More information	Sickleave.mn.gov	Paidleave.mn.gov

https://mn.gov/deed/assets/paid-leave-comparison-acc_tcm1045-611627.pdf

Minnesota Administrative Rules 5200



Office of the Revisor of Statutes

Retrieve by number Rules GO Statutes Laws Rules Court Rules Constitution Revisor's Office Search

[Rules](#) > [Labor and Industry Department](#) > Chapter 5200

Minnesota Administrative Rules

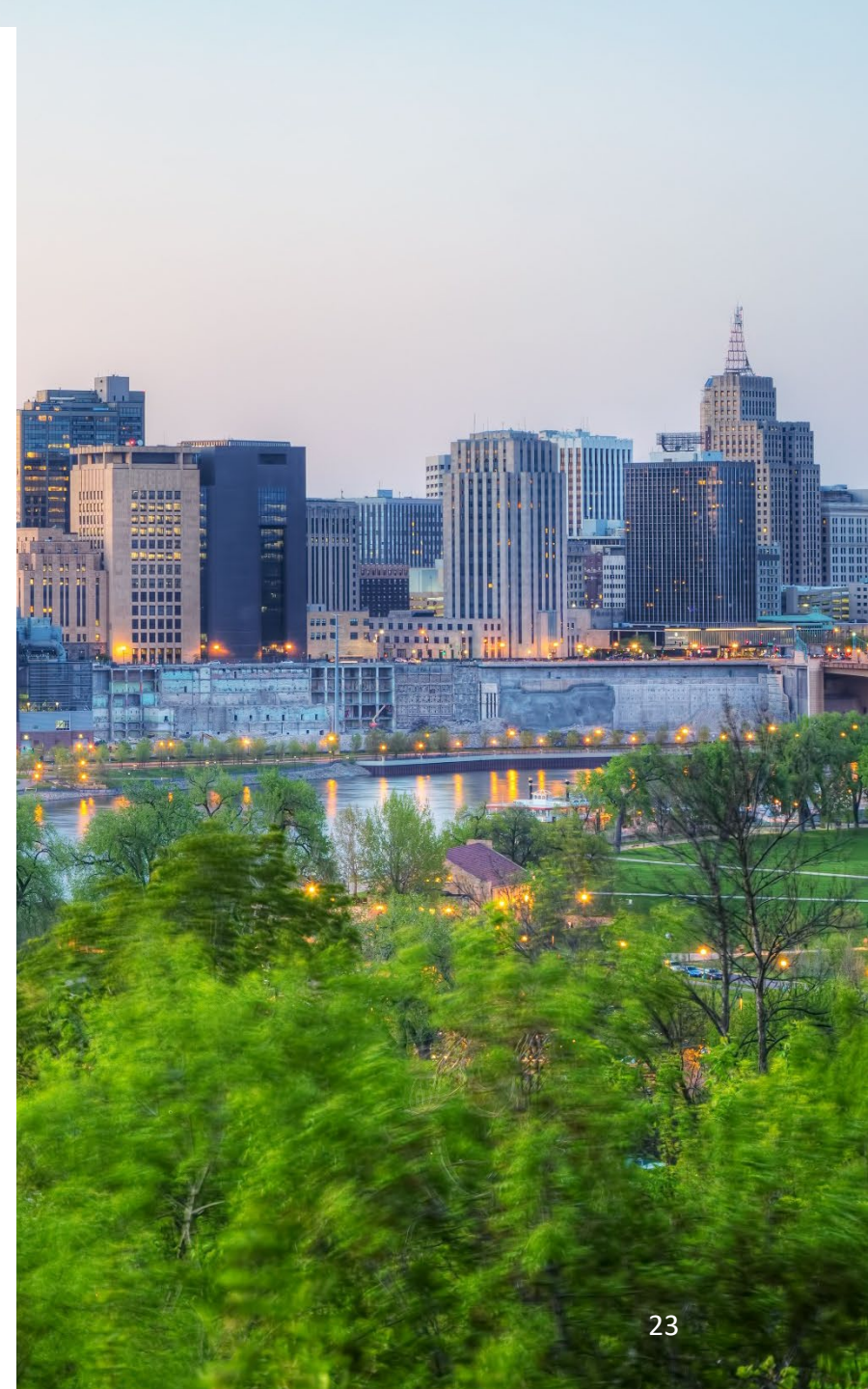
CHAPTER 5200, WAGES AND LABOR

[DEPARTMENT OF LABOR AND INDUSTRY](#)

Part	Title
5200.0010	PROOF OF MINOR'S AGE.
5200.0020	[Repealed, L 2010 c 280 s 41]
5200.0030	SUBMINIMUM WAGE RATES FOR WORKERS WITH DISABILITIES.
5200.0040	EQUAL PAY FOR WORKERS WITH DISABILITIES.
5200.0050	[Repealed, L 2010 c 280 s 41]
5200.0060	MEAL ALLOWANCE.
5200.0070	LODGING ALLOWANCE.

ESST, Minnesota Administrative Rules, 5200.1200 – 5200.1209

- Minnesota Statutes, section 177.50, subd. 6, allows the Department of Labor and Industry to adopt rules to carry out the purposes of the ESST law (Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448).
- DLI adopted rules to provide clarification and specificity about the ESST law.
- They only address certain parts of the ESST law and are in addition to the statutory provisions. The rules went into effect on July 6, 2026.



What is an “accrual year” for ESST purposes?

- An “accrual year” is a regular, consecutive 12-month period selected by the employer that must be clearly communicated to employees.
- The rule specifies that if an employer does not designate and clearly communicate the accrual year to each employee, the accrual year is a calendar year.



Can an employer change its ESST accrual year?

- Yes, an employer may change the accrual year but must provide employees with written notice of the new start and end dates before the change takes effect, as required by Minn. Stat. § 181.032(f), also known as the employee wage notice.
- The change must not negatively impact an employee's ability to accrue ESST in accordance with Minn. Stat. § 181.9446.



Determining if an employee is anticipated to work 80 hours in a year for ESST coverage

- The rule clarifies that an employer must, at a minimum, evaluate 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 ESST in accordance with Minnesota Statutes, section 181.9446.



How much ESST may an employer deduct for an indeterminate shift?

When an employee misses a scheduled shift of indeterminate length due to an ESST-eligible reason, the employer must estimate the number of ESST hours to deduct using only one of the following options:

- a) the hours worked by the replacement worker;
- b) the hours the employee worked during the most recent similar shift; or
- c) the greatest number of hours worked by a similarly situated employee who worked that shift.

When must employers credit ESST to employees?

- The rule clarifies that ESST 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.
- ESST is considered accrued when the employer credits the time to the employee.



Must employers credit ESST accrual in fractions of an hour?

- The rule clarifies that employers do not have to credit ESST with less than hour-unit increments.
- For example, Elizabeth worked 80 hours during the pay period and is credited with two hours of ESST on her regular payday. The remaining 20 hours worked are carried into the next pay period and she will be credited with another ESST hour when she works 10 more hours.



What happens to ESST if an employee is rehired within 180 days?

- The rule clarifies that if an employee separates from employment and the employer rehires the employee within 180 days, the employer must reinstate the employee's previously accrued but unused ESST to a maximum of up to 80 hours, 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 ESST to be reinstated.



Can an employer advance ESST hours?

Yes, the rule clarifies that when an employer advances ESST to an employee for the remainder of the accrual year:

- The advanced amount of ESST must be calculated at no less than the rate required under the ESST law.
- 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 ESST 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 ESST.

Can an employer change the method of providing ESST from accrual to frontloading (or vice versa)?

- Yes, the rule clarifies that if an employer wants to change the method it uses to provide ESST, such as switching from accrual to frontloading or from frontloading to accrual, it may do so.
- The employer must give employees advance written notice of the change as part of the written notice of changes to employment terms required by Minn. Stat. § 181.032(f).



Think about it #3

If an employee decides not to use ESST for an eligible reason, is that absence protected by the ESST law?

Can an employer require an employee to use ESST for an absence?

- No, the rule clarifies that it is an employee's right to use ESST for a qualifying purpose.
- However, the rule also clarifies that when the employee requests not to use ESST for an absence from work, the employee's leave is not subject to the protections provided under the ESST law. Such absences may be protected under a different law.



Reasonable documentation

- The rule clarifies that 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.
- The rule clarifies that an employee who does not provide reasonable documentation for ESST use is not subject to the protections provided under the ESST law.



Misuse of ESST

- The rule clarifies that misuse occurs when an employee uses ESST for an ineligible purpose. Misuse is not subject to the protections provided under the ESST law.
- 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, even if the employee has not been absent for more than two consecutive scheduled workdays.



What patterns or clear instances may indicate suspected ESST misuse?

The rule clarifies that a pattern or clear instance of suspected misuse includes, but is not limited to:

1. An employee repeatedly used ESST on their scheduled workday immediately before or after a scheduled day off, vacation, or holiday.
2. An employee repeatedly used increments of ESST of less than 30 minutes at the start or end of a scheduled shift.
3. An employee used ESST on a day for which the employer previously denied the employee's request to take other paid leave.
4. Documentation or other evidence that conflicts with the employee's claimed use of ESST.

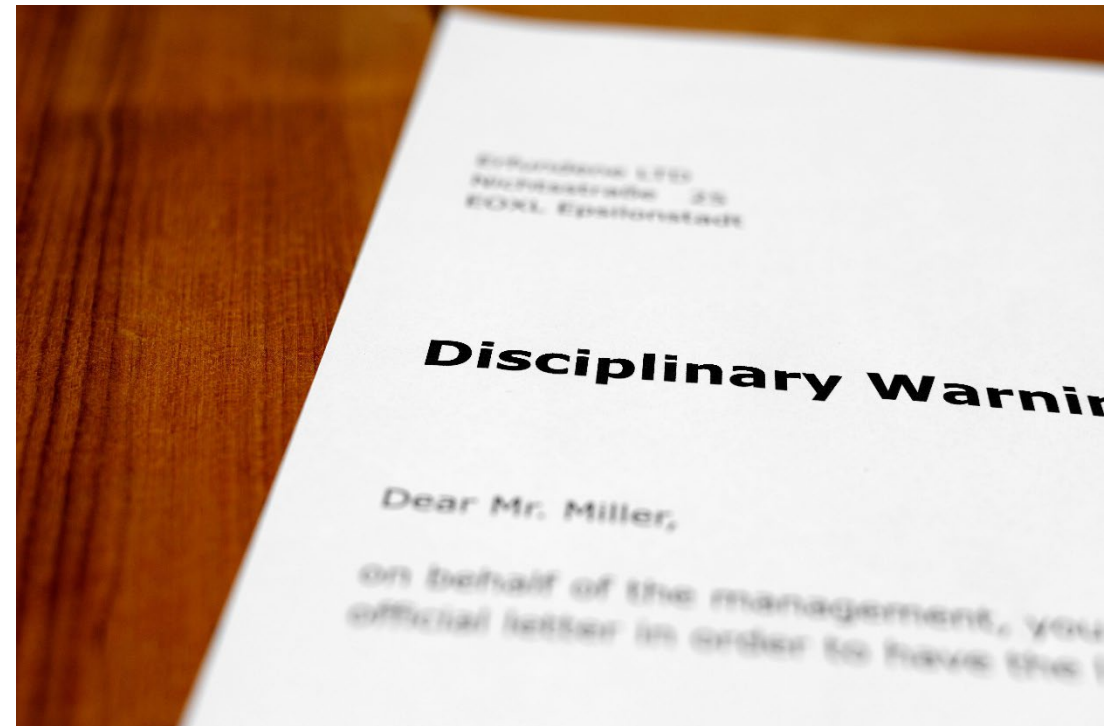
Does suspected misuse allow an employer to deny future ESST requests?

- No, an employer may not deny an employee the use of ESST for a qualifying purpose based on previous misuse of ESST by the employee or the employer's suspicion that the employee may misuse ESST.



Can an employee be disciplined for misuse of ESST?

- Yes, if an employee uses ESST for a reason that is not allowed under the law, that use is not subject to the protections provided in the ESST law.



More generous sick and safe time policies

- Additional PTO is subject to ESST protections if the employer makes the additional PTO available for absences due to an employee's illness or injury and the employee uses the additional PTO for a qualifying ESST purpose.
- If an employee uses the additional PTO for a non-qualifying purpose, ESST protections do not apply.



How do ESST rules apply to Minnesota Paid Leave?

- Paid Leave is distinct from ESST and is not covered by ESST rules. Paid Leave is a form of salary continuation benefit, which the ESST law excludes. This means employers do not have to apply ESST requirements, such as those related to accrual, use, or documentation, to Paid Leave.



Available resources and assistance

- Stay up to date with Labor Standards through the Wage and Hour Bulletin: Visit dli.mn.gov/bulletin or scan the QR code.
- View the ESST page, including FAQ and ESST rules information: dli.mn.gov/sick-leave
- Contact Labor Standards at 651-284-5075 or dli.laborstandards@state.mn.us.
- Earned Sick and Safe time issues: esst.dli@state.mn.us



Wage and Hour Bulletin



Thank you for your participation

Scan the QR code or visit the [survey page](#) to submit the survey form.



Thank you

Contact Labor Standards at:

651-284-5075

dli.laborstandards@state.mn.us

dli.mn.gov