DEPARTMENT OF LABOR AND INDUSTRY

VIA EFILING
January 14, 2026

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

In 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

Dear Judge McKenzie,

The Minnesota Department of Labor and Industry requests that the Court of Administrative Hearings review and approve its rules governing Earned Sick and Safe Time. This matter is scheduled for hearing on January 21 and 22, 2026. Ahead of the hearing, please review the Department's enclosed hearing record filing. Enclosed for your review are the documents required under Minnesota Rules, part 1400.2220, items A to K.

- **A1:** Request for Comments, as published in the State Register on July 22, 2024
- **A2:** Request for Comments, as published in the State Register on March 3, 2025
- **B:** Not enclosed: Petition for rulemaking
- **C:** Proposed Rule dated September 8, 2025, with Revisor's approval
- **D:** Statement of Need and Reasonableness (SONAR)
- **E:** Letter to the Legislative Reference Library regarding the SONAR
- **F:** Dual Notice as mailed and as published in the State Register on October 27, 2025
- **G1:** Certificates of Mailing and Emailing
- **G2:** Certificates of Accuracy of the Mailing and Emailing Lists
- **H:** Additional Notice Transmittal Email
- **I:** Comments received after publication of the Dual Notice
- **J:** Not enclosed: Chief Judge's authorization to omit proposed rule text
- **K1:** Correction to hearing dates contained in the Dual Notice, as published in the State Register on November 3, 2025
- **K2:** Judge McKenzie's approval of the Additional Notice Plan dated July 10, 2024
- **K3:** The Department's Responses to public comments received after the publication of the Dual Notice
- **K4:** Proposed Rule, as modified, post Dual Notice publication and comment period

- **K5:** Comments received after publication of the first Request for Comment
- **K6:** Comments received after publication of the second Request for Comment

If you have any questions or concerns, please contact me at Byron.millea@state.mn.us, or via phone at 651-284-5072.

Sincerely,

Byron Millea

Byron Millea
Attorney
Office of General Counsel
Department of Labor and Industry

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Proposed Rules Governing Earned Sick and Safe Time Revisor's ID Number R-04877

CAH Docket No. 25-9001-40129

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Docket No.– 25-9001-40129

Exhibit A1

Request for Comments,
as published in the *State Register*
on July 22, 2024

MINNESOTA STATE REGISTER

MONDAY, JULY 22, 2024
VOLUME 49, NUMBER 4
PAGES 57 - 88

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

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Printing Schedule and Submission Deadlines

Vol. 49 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#5	Monday 29 July	Noon Tuesday 23 July	Noon Thursday 18 July
#6	Monday 5 August	Noon Tuesday 30 July	Noon Thursday 25 July
#7	Monday 12 August	Noon Tuesday 6 August	Noon Thursday 1 August
#8	Monday 19 August	Noon Tuesday 13 August	Noon Thursday 8 August

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SUBSCRIPTION SERVICES: E-mail subscriptions are available by contacting the editor at sean.plemmons@state.mn.us. Send address changes to the editor or at the Minnesota State Register, 50 Sherburne Avenue, Suite 309, Saint Paul, MN 55155.

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- Minnesota State Register: Online subscription – $180, includes links, index, special section "CONTRACTS & GRANTS," with Sidebar Table of Contents, Early View after 4:00 pm Friday (instead of waiting for early Monday), and it's sent to you via E-mail.
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Minnesota State Register
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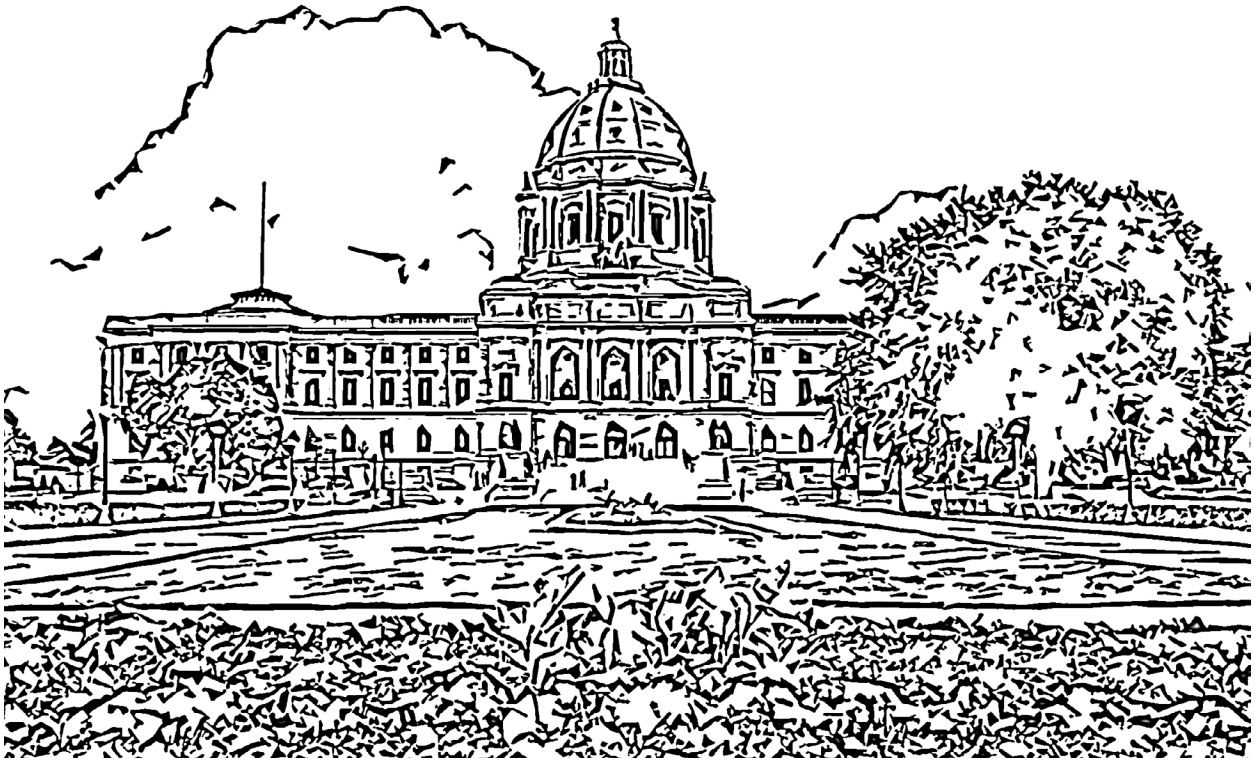
Front Cover Artwork: *A peony enjoys a sunny day in front of Minnesota's State Capitol building.*
Photo by Sean Plemmons



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The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Department of Labor and Industry

Division of Labor Standards

REQUEST FOR COMMENTS for Possible Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

Subject of Rules. The Minnesota Department of Labor and Industry requests comments on its possible adoption of rules governing Earned Sick and Safe Time ("ESST"). The Department is considering rules that would carry out the purposes of the ESST law in Minnesota pursuant to Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448. 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.

Persons Affected. The rules would affect employers and employees in Minnesota.

Statutory Authority. *Minnesota Statutes*, section 177.50, subd. 6, authorizes the Department to adopt "rules to carry out the purposes of this section and sections 181.9445 to 181.9448."

Public Comment. Interested persons or groups may submit comments or information on these possible rules, in writing, until 4:30 p.m. on Friday, September 6, 2024. The Department is seeking information from interested persons or groups regarding any areas of the ESST law that may require clarification or guidance.

Rules Drafts. The Department has not yet drafted the possible rules. The Department will consider comments submitted in this comment period to assist in rule development. The Department intends to provide a second comment period with an accompanying rule draft for interested persons or groups to review.

Agency Contact Person. Written comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to: Krystle Conley, Rulemaking Coordinator, Office of General Counsel, 443 Lafayette Road North, St. Paul, MN 55155; phone: 651-284-5006 or e-mail at ***dli.rules@state.mn.us.***

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

DATE: July 15, 2024

Nicole Blissenbach, Commissioner
Department of Labor and Industry

Docket No.– 25-9001-40129

Exhibit A2

Request for Comments,
as published in the *State Register*
on March 3, 2025

MINNESOTA STATE REGISTER

MONDAY, MARCH 3, 2025

VOLUME 49, NUMBER 36

PAGES 1017 - 1032

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#40	Monday 31 March	Noon Tuesday 25 March	Noon Thursday 20 March

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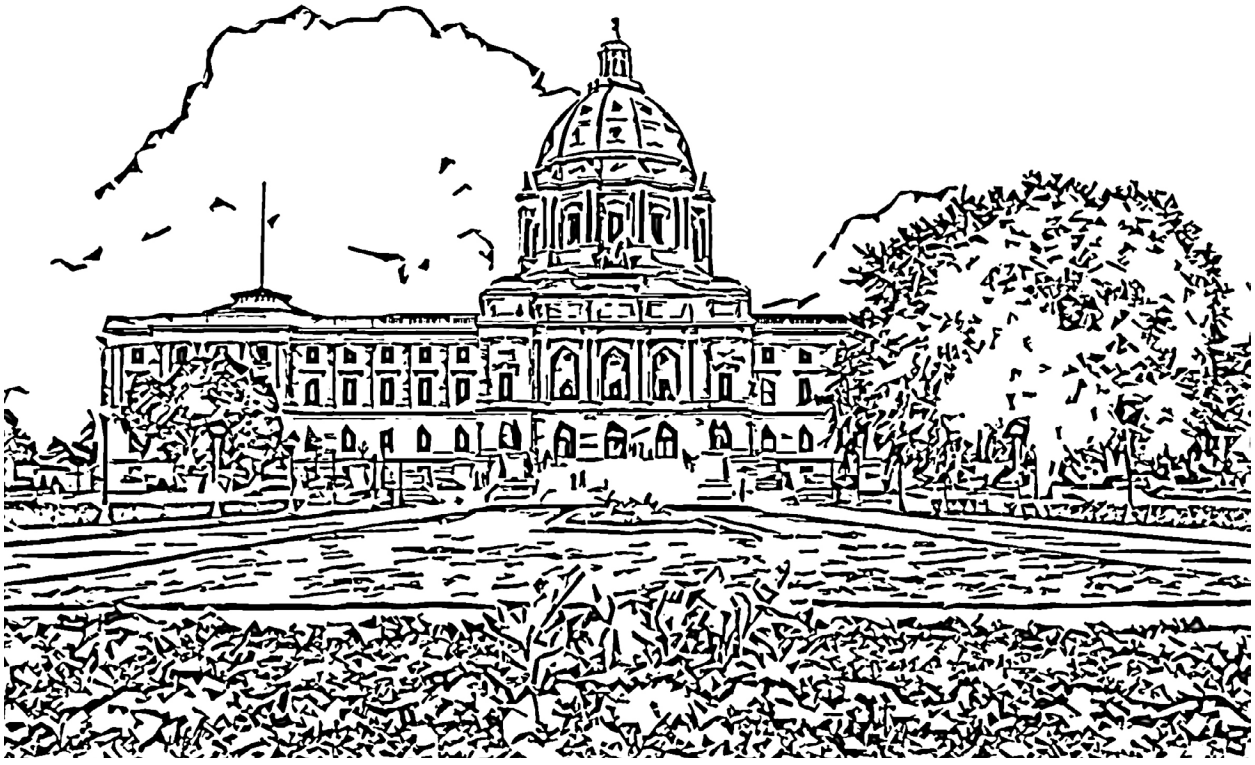
Front Cover Artwork: *A red pine shows its frost-covered needles during a cold snap in Northern Minnesota in February.*
Photo by Sean Plemmons



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Persons Affected. The rules would affect employers and employees in Minnesota.

Statutory Authority. *Minnesota Statutes*, section 177.50, subd. 6, authorizes the Department to adopt "rules to carry out the purposes of this section and sections 181.9445 to 181.9448."

Public Comment. The Department is publishing a second request for comments to seek information and comments from interested persons or groups regarding the draft ESST rules available via link below. In particular, the Department is interested in any comments regarding:

1. Whether the cost of complying with any particular rule will exceed $25,000 in the first year the rule is effective for a business or non-profit with less than 50 full-time employees or a statutory or home rule charter city with less than ten full-time employees;
2. Whether any particular rule might require a local government to adopt or amend an ordinance or other regulation;
3. An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule; and
4. Whether there are less costly methods or less intrusive methods for achieving the purpose of any particular rule.

Interested persons or groups may submit information or comments on these possible rules until 4:30 p.m. on Wednesday, April 2, 2025. Comments must be submitted in writing, to the Agency contact person at the email address below. Comments should identify the portion of the rules addressed and the reason for the comment. Important: Submitted comments are available to the public upon request. Please only submit information that you wish to make available publicly.

Rules Drafts. The Department will consider comments submitted in this comment period to assist in further rule development. A draft of the possible rules can be found ***here.***

Agency Contact Person. Written comments or questions should be directed to: Krystle Conley, Rulemaking Coordinator, Office of General Counsel, 443 Lafayette Road North, St. Paul, MN 55155; phone: 651-284-5006 or e-mail at ***dli.rules@state.mn.us.***

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Date: February 20, 2025

Nicole Blissenbach, Commissioner
Department of Labor and Industry

Minnesota State Lottery

Request for Comments on Possible Amendment to Rules Relating to Lost and Stolen Lottery Tickets, Minnesota Rules, 7856; Revisor ID Number R-04925

Subject of Rules. The Minnesota State Lottery (the "Lottery") requests comments on possible rule amendments that govern the financial responsibility for the theft or loss of unsold Lottery tickets and other related matters. Lottery retailers sell scratch tickets on consignment and are charged when a pack of tickets is sold. *See* Minn. R. 7856.7060. There is ambiguity in the existing rules regarding whether Lottery retailers are *financially* responsible when unsold tickets are lost or stolen. *See* Minn. R. 7856.7040 and 7050. Currently, when tickets are reported lost or stolen by a retailer prior to sale, the Lottery deactivates the tickets, investigates the theft, and often does not charge the retailer. *Id*. This amendment to the rules will clarify the circumstances in which retailers are charged to increase predictability for current and prospective retailers.

Persons Affected. Whether the risk of loss for unsold tickets falls on the Lottery or on the retailer impacts retailer profitability, and therefore impacts Lottery beneficiaries. Amendments to the rules would affect current Lottery retailers, prospective Lottery retailers, and Lottery beneficiaries.

Statutory Authority. *Minnesota Statutes*, section 349A.05 authorizes the Lottery to adopt rules "governing the . . . procedures needed to ensure the integrity and security of the lottery."

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the State Register that the Lottery intends to adopt or to withdraw the rules. The Lottery will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments. The Lottery does not plan to appoint an advisory committee to comment on the possible rules.

Rules Drafts. The Lottery has not yet drafted the possible rules amendments. The Lottery does not anticipate that a draft of the rules amendments will be available before the publication of the proposed rules.

Agency Contact Person. Written comments, questions, requests to receive a draft of the rules when it has been prepared, and requests for more information on these possible rules should be directed to Ben Freedland, General Counsel, Minnesota State Lottery, 2645 Long Lake Road, Roseville, MN 55113, ***ben.freedland@mnlottery.com***.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or for an accommodation to make this hearing accessible, please contact the agency contact person at the address or telephone number listed above.

Public Data. Comments submitted during formal rulemaking proceedings are public government data. This means that anyone can request to see the information. The Minnesota Government Data Practices Act prohibits sharing private data about a third party without the third party's permission. Please only submit comments that include personal information about yourself if you are comfortable with your comments being classified as public data.

Docket No.– 25-9001-40129

Exhibit B

Not enclosed: Petition for Rulemaking

(no petition was filed on the rules)

Docket No.– 25-9001-40129

Exhibit C
Proposed Rule,
including the Revisor's approval

Department of Labor and Industry

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

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

B. if the employee will work 50 percent or more of their hours for the employer outside of Minnesota in an accrual year, then only the employee's hours worked in Minnesota count toward their accrual of earned sick and safe time. The employer must determine in good faith before the start of employment and the beginning of the accrual year whether the employee will accrue earned sick and safe time under this item, unless the employer will provide the employee with at least 48 hours of earned sick and safe time during the accrual year;

C. if a significant change in circumstances will occur during an accrual year, such as a change in work location or duties, the employer must determine in good faith whether the employee will accrue earned sick and safe time under item A or B. 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. The employer must give the employee written notice of such a change prior to the date the change takes effect under Minnesota Statutes, section 181.032, paragraph (f). Any accrued but unused earned sick and safe time remains available for the employee to use during the accrual year;

D. for the purposes of this subpart, "good faith" means the employer, at a minimum, evaluated the employee's anticipated work schedule and locations of work in a manner that is not knowingly false or in reckless disregard of the truth. The employer's obligation to provide accrual of earned sick and safe time in accordance with items B and C is met if the employer acts in good faith when anticipating the employee's location of hours worked for an accrual year;

E. for the purposes of this subpart, an employee who is teleworking is considered to be working in the state where they are physically located while performing telework;

F. notwithstanding this subpart, an employer is permitted to provide earned sick and safe time in excess of the minimum amount required under Minnesota Statutes, section 181.9446; and

G. 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.

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. Changes to accrual under part 5200.1202, subpart 1, item C, are not subject to this subpart.

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:

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 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.

Office of the Revisor of Statutes
Administrative Rules

TITLE: Proposed Permanent Rules Relating to Earned Sick and Safe Time

AGENCY: Department of Labor and Industry

REVISOR ID: R-4877

MINNESOTA RULES: Chapter 5200

The attached rules are approved for
publication in the State Register

Sheree Speer
Chief Deputy Revisor

DLI0022

Docket No.– 25-9001-40129

Exhibit D
Statement of Need and Reasonableness
(SONAR)

DEPARTMENT OF LABOR AND INDUSTRY

STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Rules Governing Earned Sick and Safe Time, Minnesota Rules Chapter 5200.1200; R-04877

Department of Labor and Industry
Labor Standards Division

October 2025

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: Rulemaking Docket for Minnesota Rules, Chapter 5200.1200.
2. View older rule records at: Minnesota Rule Status, https://www.revisor.mn.gov/rules/status/
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Krystle Conley, Rulemaking Coordinator, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155; telephone 651-284-5006; email dli.rules@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.09, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
5. How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

Acronyms

ANP	Additional Notice Plan
APA	Administrative Procedures Act
CAH	Court of Administrative Hearings
CFR	Code of Federal Regulations
ESST	Earned Sick and Safe Time
Minn. R.	Minnesota Rules
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
SONAR	Statement of Need and Reasonableness
RFC	Request for Comments

Abbreviations

Commissioner	Commissioner Nicole Blissenbach
Department	Minnesota Department of Labor and Industry

Citations

ESST Law	Minn. Stat. §§ 177.50 and 181.9445 – 181.9448
Specific Rule Authority	Minn. Stat. § 177.50, subdivision 6

Introduction and Overview

Introduction

The Commissioner of the Minnesota Department of Labor and Industry ("Commissioner") proposes to adopt rules governing Earned Sick and Safe Time ("ESST"), as specifically authorized under Minnesota Statutes, section 177.50, subd. 6. Effective January 1, 2024, Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448 ("the ESST law") requires most employers to provide paid leave for covered employees to use for specific purposes, including when an employee is sick, to care for a sick family member, or to seek assistance if the covered employee or their family member has experienced domestic abuse, sexual assault, or stalking. The Minnesota Department of Labor and Industry ("Department") is responsible for providing technical compliance assistance to employers and employees and taking enforcement action under Minnesota Statutes, section 177.27, subd. 4, when necessary. The ESST law also includes a private right of action under Minnesota Statutes, section 181.944. The proposed rules carry out the purposes of the ESST law and provide clarification and guidance regarding key issues in the law.

Background

The ESST law, codified at Minnesota Statutes, sections 177.50, and 181.9445 to 181.9448, requires most employers to provide eligible employees with at least one hour of paid leave for every thirty hours worked for various qualifying purposes. The ESST law was enacted during the 2023 legislative session and became effective on January 1, 2024.[1] The law was amended by the Legislature in 2024 and 2025.[2] The Department was granted rulemaking authority during the 2024 legislative session under section 177.50, subd. 6, to "adopt rules to carry out the purposes of" the ESST law.

The ESST law consists of four main sections in Minnesota Statutes, chapter 181, and one separate section in chapter 177. The definitions for the law are in section 181.9445. Key definitions include "earned sick and safe time," "employee," and "employer." "Earned sick and safe time" is defined as "leave . . . paid at the same base rate as an employee earns from employment" and used for a qualifying purpose as described in section 181.9447.[3] The Legislature added a definition for "base rate" in 2024 to clearly convey the meaning of that term as used in the "earned sick and safe time" definition.[4] "Employee" is defined as a person "employed by an employer, including temporary and part-time employees, who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota."[5] Independent contractors, volunteer firefighters, elected officials, and certain seasonal family

[1] Laws of Minnesota 2023, chapter 53, article 12.
[2] Laws of Minnesota 2024, chapter 127, article 11; Laws of Minnesota 2025, chapter 6, article 5, sections 10 to 13.
[3] Minnesota Statutes § 181.9445, subd. 4.
[4] Laws of Minnesota 2024, chapter 127, article 11, section 6 and Minn. Stat. § 181.9445, subd. 4a.
[5] Minn. Stat. § 181.9445, subd. 5. *See also* Laws of Minnesota 2024, chapter 127, article 11, section 7 (detailing amendments to the "employee" definition).

farm employees are exempt from this definition. "Employer" is defined as "a person who has one or more employees," and the definition provides a non-exhaustive list of entities that qualify as employers.[6] Overall, the employee and employer definitions cover most employees and employers in Minnesota.

Accrual of ESST is addressed in section 181.9446. The ESST law requires employers to provide employees at least one hour of ESST for every 30 hours worked.[7] The employer does not have to allow an employee to accrue more than 48 hours of ESST per year, but employees have the right to carry over unused ESST into the next accrual year and can continue to accrue up to 80 total hours of ESST.[8] Once an employee reaches 80 total hours of unused ESST, the employer is not required to provide further ESST accrual until the employee uses some of their available ESST hours.

The ESST law sets the minimum standards for accrual, so employers can allow greater accrual if they wish. If employers do not wish to provide ESST via accrual and annual carryover, employers have two alternatives, which are commonly referred to as "frontloading." Employers can (1) provide 48 hours of ESST to employees for the year if they pay out the value of any used ESST at the end of an accrual year, or (2) provide 80 hours of ESST to employees for the year without any required payout of the value of unused ESST at the end of an accrual year.[9] Section 181.9446, paragraph (c) explains that employees exempt from overtime are deemed to work 40 hours per week for the purposes of ESST accrual unless an employee works less than 40 hours in a normal workweek. Paragraph (d) requires ESST accrual to begin when the employee begins their employment. Paragraph (e) says, "Employees may use earned sick and safe time as it is accrued."

An employee's ability to use ESST and the parameters for use are covered in section 181.9447, which is the most extensive section of the ESST law. Subdivision 1 provides the list of eligible ESST uses, which include the employee or their family member's illness or injury, certain types of bereavement leave, absences for sexual abuse or stalking and medical care or legal proceedings resulting from those situations, business, school or daycare closures related to weather or public emergencies, and absences related to communicable illnesses under a public emergency (e.g., pandemics). Subdivision 2 allows employers to require employees to provide up to seven days' notice for foreseeable uses of ESST, so long as the requirement is reflected in a written policy that has been provided to employees. For unforeseeable uses of ESST, the employee must give notice as "reasonably required by the employer."[10] Subdivision 3 covers documentation employees can require when an employee uses ESST for more than two consecutive scheduled workdays, which is referred to as "reasonable documentation."[11] In most instances, employees

[6] Minn. Stat. § 181.9445, subd. 6.
[7] Minn. Stat. § 181.9446(a).
[8] Minn. Stat. § 181.9446(b)(1).
[9] Minn. Stat. § 181.9446(b)(2).
[10] This language was modified in the 2025 legislative session from "as soon as practicable" to "as reasonably required by the employer." Laws of Minnesota 2025, chapter 6, article 5, section 10.
[11] The Legislature reduced the number of days before an employer can require reasonable documentation from three days to two days during the 2025 legislative session. Laws of Minnesota, chapter 6, article 5, section 11.

are allowed to meet the reasonable documentation requirement by providing the employer with a written statement indicating their absence was for an ESST purpose when the employee did not visit a health care professional or otherwise cannot obtain documentation in a reasonable time or without added expense.[12] Such written statements can be provided in the employee's first language and do not need to be notarized or in any particular format.[13]

The remaining portions of section 181.9447 address various employee rights and employer requirements.

- Subdivision 4 prohibits employers from requiring employees to find a replacement worker when the employee uses ESST.[14]
- Subdivision 5 allows ESST to be used in as little as 15-minute increments and prohibits employers from requiring ESST to be used in more than 4-hour increments.
- Subdivision 6 prohibits retaliation related to ESST, including prohibiting the use of an absence control or attendance point system against an employee who is using ESST.
- Subdivision 7 requires the employer to continue paying its share of the employee's insurance, as long as the employee is also paying their share, and it allows the employee to return from ESST absences at the same rate of pay and with all benefits accrued prior to taking ESST.
- Subdivision 8 allows an employer and employee to agree to the employee returning to work part-time while not forfeiting the employee's right to return to their original employment under Subdivision 7.
- Subdivision 9 requires employers to give all employees notice about employee rights under ESST law.
- Subdivision 10 requires employers to maintain records related to ESST accrual and use for at least three years, and to make ESST use and accrual information available to employees at the end of each pay period via a "reasonable system for providing this information."
- Subdivision 11 covers certain confidentiality requirements related to sensitive information about the employee's ESST use that must not be disclosed unless disclosure is required by law or otherwise consented to by the employee.

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[12] Minn. Stat. § 181.9447, subd. 3(b). *See also* Minn. Stat. § 181.9447, subd. 3(c) and (d) (allowing employees to provide written statements that their absence was for an ESST purpose when other reasonable documentation in certain circumstances).
[13] Minn. Stat. § 181.9447, subd. 3(f).
[14] The Legislature modified this provision in the 2025 legislative session by adding that it "does not prohibit an employee from voluntarily seeking or trading shifts with a replacement worker to cover the hours the employee uses as earned sick and safe time." Laws of Minnesota 2025, chapter 6, article 5, section 12.

- Subdivision 12 covers a waiver from allowing ESST use for weather events or public emergencies for certain types of employees if such an exemption meets conditions related to giving these employees notice of the waiver via collective bargaining agreement or other written policy.[15] Employees covered by subdivision 12 include firefighters, peace officers, 911 telecommunicators, correctional facility guards, and publicly employed commercial driver's license holders.

Section 181.9448 covers additional considerations and requirements related to other laws or policies. Subdivision 1, paragraph (a), allows employers to adopt policies that meet or exceed the minimum standards and requirements of ESST. Paragraph (a) also requires paid time off made available to employees for absences from work due to personal illness or injury to be subject to ESST protections, except for accrual protections in section 181.9446, when the paid time off is used as ESST (i.e., for a qualifying purpose). Other paragraphs in subdivision 1 allow for waivers of the ESST law requirements in certain situations, including under a collective bargaining agreement with a "bona fide building and construction trades labor organization." Paragraph (j) allows an employer to advance ESST to an employee before it is accrued, including advancing the amount of ESST the employee is anticipated to receive for the remainder of the year, so long as the employer provides further accrual if the employee accrues more ESST than the employer anticipated.[16] Subdivision 2 allows an employee to retain accrued ESST when they transfer to another "division, entity, or location" for the same employer but does not require the employer to pay out the value of ESST upon the employee's "termination, resignation, retirement, or other separation form employment." Subdivision 2 also requires employers to reinstate an employee's accrued and unused ESST if they are rehired by the employer within 180 days of their separation from that employer, unless the employer had disbursed the ESST "to the benefit of the employee" (e.g., pay out the value of the ESST to the employee). Subdivision 3 requires a successor employer to reinstate unused ESST to employees if they are "terminated by the original employer and hired within 30 days by the successor employer."

A separate portion of the ESST law is located at section 177.50. This section includes a cross reference to another statute providing a private right of action, allows the Department to make grants related to outreach and education about the ESST law, and requires the Department to submit an annual report the Legislature. Subdivision 5 prohibits employers from entering into contracts for labor or services with a contractor that the employer knows is not complying with the ESST law. Subdivision 6 provides the Department with rulemaking authority to carry out the purposes of the ESST law. Subdivision 7 makes employers who do not allow use or accrual of ESST liable to their employees for damages equal to the ESST that should have been provided or could have been used, plus an additional equal amount as liquidated damages. Additionally, employers who do not maintain records to establish how much ESST

[15] Minn. Stat. § 181.9447, subd. 12, was added during the 2024 legislative session. Laws of Minnesota 2024, chapter 127, article 11, section 14.

[16] The Legislature added language to the advancing provision during the 2025 legislative session to provide more guidance to employers who would like to advance ESST time to employees for the remainder of an accrual year. Laws of Minnesota 2025, chapter 6, article 5, section 13.

should have been provided to employees are liable to the employees for damages equal to 48 hours of ESST for each year in which ESST was not provided, plus an additional equal amount as liquidated damages.[17]

Scope of Proposed Rules

The proposed rules create a new section of rules in Chapter 5200 specific to ESST. The proposed rules are numbered from 5200.1200 to 5200.1209.

Statutory Authority

The Department's general rulemaking authority is in Minnesota Statutes, section 175.171(2), which states that the Department shall have the powers and duties to, in pertinent part, "adopt reasonable and proper rules relative to the exercise of its powers and duties…."

The specific statutory authority for these proposed rules is in Minnesota Statutes, section 177.50, subd. 6, which states: "The commissioner may adopt rules to carry out the purposes of this section [177.50] and sections 181.9445 to 181.9448."

The effective date of the Department's specific ESST rulemaking authority was May 25, 2024.[18]

Public Participation and Stakeholder Involvement

The Department has engaged in significant community and stakeholder outreach regarding the ESST law from June 2023 to the present. The goal of these activities has been to encourage public participation, education, training, and stakeholder involvement related to the ESST law, including this rulemaking.[19]

In addition to the significant public engagement conducted by the Department's Labor Standards Division, and consistent with the requirements of the APA, the Department published two Requests for Comments ("RFC"). At the time of publication of the first RFC on July 22, 2024, the Department did not publish a preliminary draft of the proposed rules. The Department relied on comments submitted during the first comment period to inform its preliminary proposed rule draft. During that first comment period, which lasted 45 days and ended on September 6, 2024, the Department received 41 comments. Many initial comments were requests for a draft of the rules, but 30 comments included substantive feedback.

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[17] The Legislature added subdivision 7 during the 2024 legislative session. Laws of Minnesota 2024, chapter 127, article 12, section 3.
[18] Laws of Minnesota 2024, chapter 127, article 11, section 2.
[19] See Exhibit 1 for tables detailing in-person and virtual public engagement related to ESST conducted by the Department's Labor Standards Division.

On March 3, 2025, the Department published a second RFC that included a preliminary draft of the possible rules. The draft rules reflected the comments and concerns obtained through the first RFC and various presentations soliciting input from the public and stakeholders. During the second comment period, which lasted 30 days and ended on April 2, 2025, the Department received 38 comments, all of which included substantive feedback. All comments received by the Department were carefully and thoughtfully considered in developing these proposed rules.

All published notices were sent to the individuals and organizations on the Department's rulemaking mailing list and those described in its additional notice plan.[20]

In addition, the Department posted the required rulemaking docket on its website. The docket page describes the subject of the rules, includes links to publications related to the rules, provided a link to a draft of the possible rules (during the second RFC period), and currently includes the proposed rules and this Statement of Need and Reasonableness ("SONAR"). The docket page can be found here: https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200.

Need and Reasonableness of the Rules

Statement of General Need and Reasonableness

The Legislature provided the Department with the statutory authority to adopt rules to carry out the purposes of the ESST law.[21] The proposed rules are intended to clarify key issues in the ESST law, including employer administration of ESST benefits, determining hours worked that are subject to ESST accrual, an employee's right to use ESST, incentives related to production or attendance goals, reasonable documentation, employee misuse of ESST, and more generous paid leave policies. The proposed rules reflect feedback received during the Department's two comment periods in 2024 and 2025 and from additional outreach and stakeholder engagement. The Department's own experience providing technical assistance to stakeholders seeking to implement and comply with the ESST law has also informed this rulemaking. The proposed rules are necessary to ensure more consistent understanding and implementation of the ESST law, which will alleviate stakeholder confusion and minimize costs associated with noncompliance for all stakeholders.

While drafting these rules, the Department carefully considered the parameters of the ESST law, researched and considered the ESST laws and rules of other jurisdictions, and reviewed feedback during the two comment periods, as well as informal feedback from stakeholders outside of comment periods.

[20] See page 42 for details on the Department's Additional Notice Plan.
[21] Laws of Minnesota 2024, chapter 127, article 11, section 2.

The proposed rules are reasonable because they do not conflict with the ESST law, are cost-neutral for employers, and largely function as a means of clarification rather than imposing additional requirements.

Rule-by-Rule Analysis

The rule-by-rule analysis discusses each section of the proposed rules, including a description of the need for the proposed rules and why the proposed rules are reasonable solutions for meeting those needs.

5200.1200. DEFINITIONS.

Subpart 1. Scope.

This proposed subpart is needed to make clear that the proposed definitions apply to both the statutory sections of the ESST law, Minnesota Statutes, sections 177.50, 181.9445 to 181.9448, and the proposed rules parts, 5200.1201 to 5200.1209. The terms defined are each used in statutory sections of the ESST law, and each term is also used in the proposed rules, which will provide for consistency in the meaning and application of the defined terms.

Subpart 2. Accrual year.

This proposed subpart defines the term, "accrual year," by cross-referencing the statutory definition of "year" in Minnesota Statutes, section 181.9445, subd. 11. The statute defines "year" to mean "a regular and consecutive 12-month period, as determined by an employer and clearly communicated to each employee of that employer." The 12-month period determined by the employer relates to the employee's accrual of ESST and governs whether an employee reaches their annual maximum number of ESST hours (i.e., 48 hours) during an accrual year. The accrual year also sets the yearly end date for the purposes of applying the annual carryover, frontload and/or payout options found in section 181.9446. Using the term "accrual year" is reasonable and necessary to provide a more specific and descriptive phrase than the alternative of using "year" throughout the proposed rules.

The term "accrual year" is also used in section 181.9447, subd. 9, regarding an employer's duty to provide notice to employees of their ESST rights. Accordingly, this definition is necessary to further clarify that "accrual year" and "year" have the same meaning in the statute.

Subpart 3. Qualifying purpose.

Proposed subpart 3 clarifies that "qualifying purpose" refers to ESST used for an eligible reason listed in Minnesota Statutes, section 181.9447, subd. 1. While this term is not used extensively in these proposed rules, it is reasonable and necessary to include a phrase as shorthand over the alternative of using a lengthier description to communicate the same meaning, such as, "earned sick and safe time used for an eligible reason pursuant to section 181.9447, subd. 1." "Qualifying purpose" is also used in section 181.9447, subd. 3, regarding reasonable documentation for ESST use. So, this definition clarifies that this term refers to eligible uses of ESST as described in section 181.9447, subd. 1.

5200.1201. ACCRUAL YEAR.

This proposed rule is necessary to address the outcome for an employer who does not designate an accrual year and the manner in which an employer may change their designated accrual year. The proposed subparts addressing these issues are reasonable because they maintain employee protections related to ESST accrual while allowing employers to designate and change the accrual year in accordance with the ESST law.

Subpart 1. Accrual year.

Proposed subpart 1 clarifies the consequences of an employer not following the requirement to designate and clearly communicate its "regular and consecutive 12-month period" (i.e., accrual year) to employees in accordance with Minnesota Statutes, section 181.9445, subd. 11. The statute itself does not indicate the outcome if an employer fails to properly designate an accrual year. Therefore, this proposed subpart is necessary to address this issue by providing a default that is consistent with the statutory definition – the accrual year is the calendar year (i.e., January to December) if the employer does not designate and clearly communicate a different, consecutive 12-month time period.

Using the calendar year as the default is the most reasonable and commonly understood manner of defining a consecutive 12-month period. Additionally, by establishing a default accrual year when an employer fails to designate one of its own, employees will not face uncertainty or disadvantages related to an employer not appropriately administering an ESST program. For example, an employer who fails to implement an ESST program, including failing to designate an accrual year, would be deemed to have an accrual year equivalent to a calendar year, and damages under section 177.50, subd. 7, would be calculated based on a calendar year.

Subpart 2. Changes to accrual year.

The ESST law allows an employer to unilaterally designate its accrual year, which means an employer can change their accrual year. However, the law does not provide any explicit guidance about how to change accrual years in compliance with the ESST law and related notice provisions. While this type of change may be infrequent, such a change could result in lost ESST time for employees. Therefore, it is necessary to add a provision to protect employee ESST accruals from outcomes that would not comply with the ESST law.

Proposed subpart 2 explains that any change to an employee's accrual year made by an employer must first be communicated to the employee in writing. The last sentence of this proposed subpart prohibits employers from a change in the accrual year that would negatively impact an employee's ability to accrue ESST. An employer who changes their accrual year would need to ensure employees can still accrue at least 48 hours in the new accrual year as required by Minnesota Statutes, section 181.9446(a) and 80 hours total as required by section 181.9446(b)(1). An example is helpful to illustrate how the rule operates.

Example: ACME Company designated their accrual year as running from January to December. In late 2025, the company decides to change its accrual year to align with their fiscal year, which runs from July through the following June. ACME Company decides to move to a new accrual year beginning July 1, 2026, and creates a 6-month gap between the old and new accrual years from January 1, 2026, to July 1, 2026. During this gap, ACME Company must ensure employees can accrue ESST in accordance with Minnesota Statutes, section 181.9446 in amounts no less than the employees would have accrued without a change in accrual year.

In the above example, an employer who counted the ESST hours accrued in the 6-month gap towards the employee's 48-hour maximum annual ESST accrual in the old or new accrual year would, in effect, create a one-time accrual year of 18 months, which would negatively impact an employee's accrual of ESST. Therefore, this subpart is necessary to require that employers can only change accrual years in a manner that does not violate an employee's right to accrual of ESST. The proposed subpart is reasonable because it maintains the ESST law requirements for minimum annual accrual and minimum overall accrual while giving employers flexibility to change their accrual year, as allowed under the ESST law, to better align with business needs, human resource planning, etc. The proposed subpart also aligns with the broader purpose of the ESST law by preserving an employee's access to earned benefits, prioritizing clear communication, and ensuring that any change to an employee's accrual year does not undermine their statutory rights.

5200.1202. HOURS WORKED.

This proposed rule addresses questions related to the accrual of ESST and the deductions of accrued ESST from an employee's balance when the employee uses ESST. Minnesota Statutes, section 181.9446 sets the minimum ESST accrual rate and the annual and total number of ESST hours employers must allow employees to accrue, as well as annual frontloading options for employers who wish to avoid tracking ongoing ESST accruals.[22] This rule is intended to clarify the ESST law as it relates to: (1) ESST accrual for employees who work in multiple states; (2) determining which hours count toward employees' ESST accrual; (3) determining how many hours to deduct from an employee's ESST balance when ESST is used for a shift of an indeterminate length; and (4) determining how many hours to deduct from an exempt employee's ESST balance when absent for a full work day.

[22] Under Minn. Stat. § 181.9446(a) and (b), an employee must be allowed to accrue up to 48 hours of ESST each accrual year and no more than 80 hours of ESST at any one time, unless the employer agrees to a higher amount for either minimum. Employers also have a separate option to "frontload" ESST hours for their employees under Minn. Stat. § 181.9446(b)(2) by either providing (1) 48 hours ESST for the year and paying out the value of any remaining ESST at the end of an accrual year, or (2) 80 hours ESST for the year without any required payout of the value of unused ESST at the end of an accrual year.

Subpart 1. Location of hours worked.

This proposed subpart clarifies the extent of ESST accrual based on whether the employee predominantly works in Minnesota. The definition of "employee" in Minnesota Statutes, section, 181.9445, subd. 5, makes an employee eligible for ESST if they are "employed by an employer" and "anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota." This definition covers employees who may spend the majority of their work hours outside Minnesota, including those who neither reside nor regularly work in the state. The definition also covers employees who may have significant connections to Minnesota in the context of their employment by working extensively in the state, even if they do not reside in Minnesota.

However, nothing in the ESST law addresses whether hours worked by eligible employees outside of Minnesota should be counted towards ESST accrual. Without a rule, employers and employees will lack clear standards to follow regarding the extent of ESST accrual for individuals working in both Minnesota and elsewhere, and eligible employees may not receive the full benefits and protections of the ESST law. Therefore, it is necessary to propose a rule on this topic. Further, the proposed subpart is a reasonable method of ensuring eligible employees receive the full extent of ESST to which they are entitled. It creates an objective, quantifiable standard by which employers can evaluate whether their employees should accrue ESST for all hours worked or just those hours worked in Minnesota.

Notably, this proposed subpart has no effect on employers who opt to use a frontloading method, as provided in section 181.9446(b)(2), in which employees receive ESST hours up front for their accrual year. Employers who use frontloading avoid tracking hours worked for the purposes of ESST accrual, which would also include tracking the location of employees' hours worked. This proposed subpart is also limited in its application by the minimum accruals required in section 181.9446(a) and (b)(1) for employers who do not use frontloading to provide ESST to their employees. For context, the minimum annual accrual of 48 ESST hours represents 1,440 hours worked in a year, which is an average of nearly 27 hours per week.[23]

Item A of the proposed subpart is reasonable because employees who work the majority of their hours in Minnesota have a significant and predominant employment connection with Minnesota such that the ESST law should cover the entirety of the employee's hours worked for the purposes of accruing ESST, regardless of their location. On the other hand, employees covered by Item B who work less than the majority of their hours in Minnesota accrue ESST only for hours worked in Minnesota, thereby limiting their accrual in line with their more limited interaction with the state.

The mechanics of this proposed subpart warrant further explanation. Each employee who receives ESST from their employer on a basis of accruing hours (rather than one of the two frontloading options) is categorized under either Item A or B of the proposed subpart. The employer should determine in good

[23] By comparison, a full-time employee working 40 hours per week for 52 weeks will work 2,080 hours in a year.

faith whether the employee is anticipated to work 50% or more of their hours outside Minnesota over the accrual year under Item B. Employers who opt to allow employees to accrue ESST in accordance with Item A are not required to make a good-faith determination because they are already providing employees with the maximum ESST accrual in a year as defined by section 181.9446.

While the proposed subpart is not overly prescriptive about how employers determine if an employee will accrue ESST in accordance with Item B, they must do so in good faith, as defined in Item D, which requires evaluation of at least the employee's anticipated work schedule and locations of work. Under the good-faith standard, employers are being asked to make a reasonable forecast. 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. For example, if an employer estimates in good faith that an employee will work 45% of their time in Minnesota (i.e., falls under Item B), but the employee actually ends up working 55% of their time in Minnesota (i.e., falls under Item A), the proposed subpart does not require the employer to retroactively correct the employee's ESST accrual to account for the discrepancy. Item D's good-faith standard addresses employers who have made a determination that an employee falls under Item B, which ultimately turns out to be incorrect at the end of the accrual year, but not because of any specific, significant change in the employee's work circumstances. Significant changes in circumstances during the accrual year are addressed in Item C.

Once an employer determines whether the employee falls under Item B, the employer would not need to reevaluate its determination unless there is a significant change in the employee's work circumstances during an accrual year that requires a reevaluation of the employee's ESST accrual under this proposed subpart. Under Item C, if the employer finds that the employee's work circumstances will change significantly, then the employer will determine in good faith whether the employee's accrual falls under Item A or B going forward. Item C is intended to cover non-trivial changes in work circumstances, such as a change in work location or duties. In these instances, the employer has knowledge of a change that will occur that would require a reevaluation under Item C. If the employer determines a change in the employee's ESST accrual is necessary, any such change would be effective as of the date of the change in circumstances. The employee should receive notice prior to the change taking effect. Additionally, the employer cannot revoke any ESST hours already accrued and unused at the time of the change. All accrued and unused ESST hours must remain available for use by the employee.

Item C is necessary to distinguish significant changes from nominal changes in an employee's work circumstances that may occur during the accrual year. Item C is reasonable because it allows for a balanced approach to changes in circumstances by allowing accrual changes in situations where the employee would accrue more ESST (i.e., under Item A) or less ESST (i.e., under Item B). The proposed subpart is also reasonable because it limits an employer's responsibility to make mid-year accrual changes to only those situations in which such a change is clearly necessary to comply with the ESST law and this proposed subpart.

Item E is necessary because the ESST law does not specifically address telework, and telework is a current and relevant employment issue. An employee is considered to be working in the state from which they are physically performing telework. Therefore, an employee who teleworks in Wisconsin for the majority of their work hours for a company whose office is located in Minnesota will only accrue ESST for the hours in which the employee is working at the company's office in Minnesota or elsewhere in Minnesota, unless the employer agrees to provide a greater amount of accrual. The proposed provision is reasonable because it hinges on the employee's physical location rather than a less clear determination, such as identifying other locations in which a teleworking employee may be interacting with co-workers or customers.

Item F makes clear that the proposed subpart as a whole is not intended to limit employers who want to provide employees who work 50% or less of their hours in Minnesota with ESST accrual for all hours worked. This proposed provision reflects that the ESST law sets a floor, rather than a ceiling, regarding accrual amounts.[24] Some employers may wish to avoid application of the requirements and processes embedded in this proposed subpart, so this provision is necessary to give effect to and avoid any conflict with the statutory provisions that clearly authorize employers to take a more generous approach to their employees' ESST accruals than the law minimally requires.

Item G further limits the scope of this proposed subpart by deferring to other jurisdictions outside of Minnesota where this proposed subpart may be in conflict with a state or local law. The Department is unaware of any such laws, but the inclusion of this provision makes clear that other jurisdictions may override the requirements of this proposed subpart through their own legislative or regulatory authority and limit its reach.

Subpart 2. Determining hours worked.

Proposed subpart 2, item A, cross-references existing wage and hour administrative rules, Minn. R. 5200.0120 (Hours Worked) and 5200.0121 (Sleeping Time and Certain Other Activities), as governing determinations of an employee's hours worked for purposes of calculating the amount of ESST accrued. The effect of item A is that if an employee's time constitutes "hours worked" under Minn. R. 5200.0120 or 5200.0121, then that time counts the same for the purposes of ESST accrual.

Item A is necessary because ESST hours accrue based on the statutory rate of "one hour of [ESST] for every 30 hours worked."[25] The statute, however, does not define "hours worked." The cross reference to parts 5200.0120 and 5200.0121 ensures that employees and employers have a uniform and clear standard to follow when determining what time counts as "hours worked," which is critical for determining

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[24] *See* Minn. Stat. § 181.9446(a)-(b) (providing minimum required annual and total ESST accruals that employers must allow employees to accumulate and allowing employers to agree to higher accrual amounts); Minn. Stat. § 181.9448, subd. 1(a) ("Nothing in sections 181.9445 to 181.9448 shall be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements provided in sections 181.9445 to 181.9448.").
[25] Minn. Stat. § 181.9446(a) (emphasis added).

the number of ESST hours accrued. Selecting the existing wage and hour administrative rules as the standard is reasonable because they are long-established Department rules. By relying upon Minn. R. 5200.0120 or 5200.0121 to define "hours worked", item A avoids creating new and unfamiliar approaches to tracking time while allowing for predictable and fair ESST accrual.

Separately, item B of this proposed subpart covers deduction of ESST from an employee who is exempt from overtime requirements under United States Code, title 29, section 213(a)(1). This item corresponds to Minnesota Statutes, section 181.9446(c), which governs the accrual of ESST by exempt employees. The statute allows an exempt employee to accrue ESST based on a 40-hour workweek unless the employee regularly works less than 40 hours in a normal workweek. However, nothing in the statute addresses the amount of time that is deducted from an exempt employee's ESST balance when they use ESST. Therefore, item B is necessary to protect exempt employees from ESST deductions that do not reflect their exempt status. For example, an exempt employee may typically work nine hours per day to meet business needs but is only credited ESST time based on an eight-hour workday, pursuant to section 181.9446(c). This employee should therefore only have eight hours of ESST deducted from their ESST balance rather than nine hours when they are absent for a qualifying purpose for a full work day. As this example indicates, this proposed rule mirrors the principle for exempt employees' ESST accrual provided in section 181.9446(c). Under this item, when an exempt employee uses ESST, the employer can only deduct the amount of ESST which would have been the basis for the employee's accrual on the day of the absence.

Notably, item B only applies when an exempt employee is absent for a full work day. In all other scenarios, the employer would deduct the number of hours the employee was absent from the employee's ESST balance. Item B is reasonable because it adheres to the statutory language regarding a corresponding issue related to exempt employees and does not create any additional benefit to the employee or additional responsibility for the employer.

Subpart 3. Indeterminate shift.

This proposed subpart provides options for employers to determine how many ESST hours should be deducted from an employee who uses ESST for an absence from a shift that does not have a defined end time or set number of work hours (e.g., 4:00 p.m. to close). The proposed subpart is necessary because indeterminate shifts are not specifically addressed in the ESST law, leaving employers and employees unsure about how to calculate the number of hours that should be deducted from an employee's balance when they are absent for a shift of an indeterminate length.

Item A sets forth three options for deducting hours for ESST use in sub-items 1 to 3. The proposed item directs the employer to use one of these options when determining ESST hours used by an employee for a shift of an "indeterminate length," and that term is further clarified in this item. Sub-item A is reasonable because the employer can decide which option to use, and there is flexibility for the employer

to use a different option for each absence.[26] This subpart provides reasonable options while fairly tying deductions of ESST from ESST balances to lengths of time likely to approximate the number of hours the employee would have actually worked.

Item B covers situations where an employee uses ESST in the middle of working a shift of indeterminate length. The item directs the employer to use the same options in item A, but to subtract the hours actually worked by the employee before they used ESST during the shift. Item B is needed because item A only addresses absences for a full shift, and it is reasonable because it aligns with item A rather than creating a separate set of options or requirements.

5200.1203. TIME CREDITED AND INCREMENTS OF ACCRUAL.

This proposed rule addresses administrative topics related to crediting employees with accrual, including reinstating ESST previously credited to employees upon rehire. The proposed subparts are necessary to provide clarity related to when ESST must be credited to employees, how much ESST must be credited based upon hours worked, and how much ESST must be credited back to an employee upon rehire within 180 days of separation. The proposed subparts are reasonable because they align with the applicable statutory language and do not create additional administrative requirements for employers.

Subpart 1. Crediting accrual.

This proposed subpart corresponds to Minnesota Statutes, section 181.9446(e), which says, "Employees may use earned sick and safe time as it is accrued." Some employers may understand this statute to require ESST accruals to be credited to employees in real time before the employer has had an opportunity to administratively process and record the ESST accrual in their normal course of business. Therefore, this proposed subpart is necessary to ensure employers and employees understand that ESST can be credited to an employee for use on subsequent work days in the normal course of business.

The proposed subpart clarifies that employers must credit accrued ESST to employees no later than the payday after the end of each corresponding pay period. For example, if an employer's pay period is Saturday, June 21 to Friday, July 4, and the corresponding payday for that pay period is Friday, July 11, then the employer must credit the ESST accrued by the employee during the June 21 to July 4 pay period no later than the July 11 payday. Under this proposed subpart, an employer is not required to allow an employee to use ESST that was accrued during the same pay period but is not yet reflected or credited to the employee on their earnings statement or other reasonable ESST reporting system.[27]

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[26] While the employer may choose any option, two of the options are inherently self-limiting because not all employee absences will fit each option. Item A is only applicable if the employer had a replacement worker fill in for the employee using ESST. Item C is only applicable if the employer has similarly situated employees.

[27] *See* Minn. Stat. § 181.9447, subd. 10(b) ("Employers may choose a reasonable system for providing" the total number of ESST hours available and ESST hours used during the pay period.).

This proposed subpart is reasonable because it aligns the crediting of accrued ESST with the employer's normal pay periods and pay dates, and it will not require employers to modify or create new businesses processes to track and credit ESST in real time.

Subpart 2. Increment of time accrued.

Proposed subpart 2 is necessary to avoid inconsistency in employee expectations and employer application of the ESST law's accrual provision. This subpart helps to resolve an important question related to increments of accrual. Minnesota Statutes, section 181.9446(a) requires employees to accrue ESST at a minimum rate of "one hour of earned sick and safe time for every 30 hours worked." However, the statute does not directly address whether an employer is obligated to provide ESST accrual in smaller than whole hour increments. For instance, if the employee works 15 hours in a pay period, the statute does not expressly indicate whether the employee is owed one-half hour of ESST.

This proposed subpart requires only full hour increments to be credited to employees each pay period by their employer, and fractions of an hour do not need to be credited in the pay period. For example, the employer is only required to credit one ESST hour to an employee who works 40 hours in a pay period rather than 1.33 ESST hours (i.e., 40 hours divided by 30). In this situation, the employer would count the remaining 10 hours towards further accrual in the subsequent pay period.

This subpart is reasonable because it adheres closely to the statutory language in section 181.9446(a). Additionally, nothing in this subpart prohibits an employer from crediting employees with the fractional amounts of ESST each pay period if the employer would like to do so.[28]

Subpart 3. Rehire.

This proposed subpart specifies the total amount of accrued, but unused, ESST hours that must be reinstated to an employee who separates from employment but is rehired by the same employer within 180 days pursuant to Minnesota Statutes, section 181.9448, subd. 2. The statute provides: "When there is a separation from employment and the employee is rehired within 180 days of separation by the same employer, previously accrued earned sick and safe time that had not been used or otherwise disbursed to the benefit of the employee upon separation must be reinstated."[29]

Accrual of earned sick and safe time is addressed by section 181.9446. The section establishes, "[t]he total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, unless an employer agrees to a higher amount." The proposed subpart is needed to clarify that the 80-hour "at any time" total applies to the reinstatement requirement in section 181.9448, subd. 2, unless, as stated in the proposed subpart, the employer agrees to a higher amount, or a higher

[28] For example, if an employee works 70 hours in a pay period, this proposed subpart does not prohibit an employer from crediting the employee with 2.33 ESST hours for that pay period.
[29] The proposed subpart addresses only the reinstatement of accrued and unused ESST that has not been disbursed or paid out to the employee upon separation.

amount is required by contract or other legal authority. The proposed subpart is reasonable because it caps the reinstatement of unused and unpaid "previously accrued earned sick and safe time" consistent with the amount of total accrual required by section 181.9446(b)(1).

The proposed subpart is also needed because section 181.9448, subd. 1(a), states that paid time off and other paid leave "in excess of the minimum amount required in section 181.9446" made available by the employer for personal illness or injury is subject to the minimum standards and requirements of the ESST law, "except for section 181.9446." The proposed subpart addresses uncertainty regarding the application of section 181.9448, subd. 1(a) to the reinstatement requirement in section 181.9448, subd. 2. The proposed subpart clarifies that the employer is not required to reinstate more than 80 hours of accrued but unused ESST upon rehire, consistent with the 80-hour "at any time" accrual provision in section 181.9446(b)(1). The proposed subpart is reasonable because the reinstatement requirement in section 181.9448, subd. 2, specifically applies to "previously **accrued** earned sick and safe time that had not been used." (Emphasis added). The employer-provided excess leave subject to section 181.9448, subd. 1(a), is not "accrued," as section 181.9448, subd. 1(a), specifically excludes the accrual section of the ESST law from its application.

5200.1204. ACCRUAL AND ADVANCING METHODS.

This proposed rule addresses the manner in which: (1) an employer may advance ESST to an employee for the remainder of the year, and (2) an employer may change methods of providing ESST to an employee under Minnesota Statutes, section 181.9446. The proposed subparts are necessary to ensure advancement of ESST and accrual method changes are done in compliance with all components of the ESST law. The proposed subparts are reasonable because they do not create new requirements for employers and protect employee rights under the ESST law.

Subpart 1. Advancing hours.

Minnesota Statutes, section 181.9448, subd. 1(j), permits an employer to advance ESST time to an employee. During the 2025 legislative session, the legislature amended this provision to include additional language further prescribing how employers can advance ESST as follows:

> An employer is permitted to advance earned sick and safe time to an employee based on the number of hours the employee is anticipated to work for the remaining portion of an accrual year. 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.[30]

The Department has received questions from employers who want to provide employees with ESST for the year up front when the employee begins employment rather providing "1-for-30" ESST

[30] Laws of Minnesota 2025, chapter 6, article 5, section 13.

accrual pursuant to section 181.9446(a). Employers have also asked for a way to prorate a frontloaded amount of ESST to employees at the beginning of employment, since the vast majority of employees will not begin their employment the first day of their employer's accrual year. The Legislature addressed this concern through the amended language in section 181.9448, subd. 1(j), and the proposed subpart is intended to further supplement and clarify this solution.

The proposed subpart ensures an employer advancing ESST remains compliant with other aspects of the ESST law, as well as making clear that an employee who receives advanced ESST is not entitled to more time than the minimum amount required to be provided by the ESST law. This proposed subpart is necessary to provide additional parameters related to advancing time in connection with new statutory language added during the 2025 legislation session and ensure advancement of ESST is done in compliance with the accrual provisions in section 181.9446(a). This proposed subpart is reasonable because it adheres to statutory language regarding advancing time to employees and does not create any additional benefit to the employee while protecting the benefits employees are entitled to regarding ESST accrual.

Item A of this proposed subpart requires an employer to calculate the amount of ESST advanced at the rate set by statute, 1 hour for every 30 hours worked.[31] Item B informs employers and employees that the 48-hour minimum annual accrual still applies to an employer advancing ESST for the remainder of the year.[32] Item C reiterates the statutory requirement for employers to ensure that employees do not receive fewer ESST hours in the event the employee works more hours for the remainder of the year than the employer had estimated when they calculated the amount of ESST to advance to the employee under section 181.9448, subd. 1(j). Item C also adds a 15-day timeframe for the employer to reconcile the employee's ESST balance in that circumstance.

The 15-day timeframe in Item C is necessary to ensure the employee continues to receive any additional ESST to which they are entitled under section 181.9446(a) and (b)(1). The 15-day timeframe is reasonable because it matches a bi-weekly pay period, plus one day, which allows employers adequate time to complete the necessary reconciliation while also ensuring an employee is not left with an inadequate ESST balance relative to their accrual for an extended period of time. It also aligns with the requirement in section 181.9446(c) that allows employees to use ESST as it is accrued.

[31] Minn. Stat. § 181.9446(a).
[32] *Id.*

Subpart 2. Changing methods.

Proposed subpart 2 requires an employer to inform employees of any change to the employer's elected ESST accrual method under Minnesota Statutes, section 181.9446(a) or (b) prior to the change taking effect and prohibits changes to the accrual method in the middle of an accrual year.[33]

This provision is necessary because, although section 181.9446(a) and (b) permit three different methods for employees to receive ESST, the statue does not specify when or how an employer may switch between those methods. Without this proposed rule, employers lack a clear standard to follow when changing to a different accrual method. This proposed subpart is also necessary to ensure employers cannot alter accrual methods in a manner that is detrimental to the ESST benefits to which employees are entitled under the ESST law. For example, an employer who has frontloaded 48 hours of ESST for employees in accordance section 181.9446(b)(2), would be prohibited from zeroing out ESST balances in the middle of the year and switching to a "one-for-30" ESST accrual under section 181.9446(a). The proposed subpart also reflects the fact that the section 181.9446 methods for providing ESST are annual options and not a set of choices an employer can change at any time to the detriment of employees.

Additionally, section 181.032 is a separate statute outside of the ESST law that requires employers to provide notice to employees about changes to their employment terms, including changes related to "paid vacation, sick time, or other paid time-off accruals and terms of use." Therefore, the proposed subpart is also necessary to highlight an obligation employers have under Minnesota law to inform employees of a change to their ESST accrual prior to the change becoming effective.

This proposed subpart is reasonable because it offers employers a clear framework for changing an employee's accrual method with minimal administrative responsibility beyond what is already required related to employee notice in section 181.032. The provision also provides two reasonable employee protections by: (1) allowing the employee to choose to maintain their old accrual method or accept to new method in situations where they are not timely informed of the change in accrual; and (2) not allowing employers to make changes to the accrual method in the middle of the year, which could impact the employee's decisions regarding use of ESST or cause other unfavorable outcomes for employees.

Subpart 3. No additional accrual necessary.

This proposed subpart is necessary to clarify that employers who choose to frontload ESST for their employees at the beginning of the accrual year pursuant to the options set forth in Minnesota Statutes, section 181.9446(b)(2), are not required to also provide those employees with "one-for-30" accrual pursuant to section 181.9446(a) during the same accrual year. The distinction between frontloading and ongoing accrual is not expressly addressed in statute, and section 181.9446(b)(2)'s focus on carryover, rather than accrual, has led employers to wonder about whether section 181.9446(a)'s "one-for-30"

[33] This proposed subpart does not apply to changes to accrual related to location of hours worked under proposed rule 5200.1202, subp. 1, item C because that proposed item includes its own notice provision.

accrual requirement applies regardless of whether the employer opts to frontload ESST at the beginning of the accrual year.

This proposed subpart is reasonable because it reflects the extent of required annual accrual in the ESST law and merely serves to clarify a point of confusion. The frontloaded amounts of 48 or 80 hours set out in statute do not require any additional accrual to be offered by the employer because an employer is only required to allow an employee to accrue up to 48 hours of ESST in an accrual year under section 181.9446(a), and the statute describes frontloading as an option by which employers provide employees with ESST "for the year".

5200.1205. EMPLOYEE USE.

This proposed rule addresses an employee's right to use or not use ESST for absences that qualify for ESST use. The proposed subparts are necessary to ensure employees receive the benefits of the ESST law without being subject to employer overreach through mandatory use of ESST. The proposed subparts are reasonable because they reinforce employee rights related to use while balancing those rights against an employer's ability to discipline employees who choose to be absent without invoking the ESST law's employee protections.

Subpart 1. No required use.

Subpart 1 of this proposed rule provides that it is an employee's right to use, or not use, ESST for a qualifying purpose and further states that the employer cannot require an employee to use ESST. The proposed subpart is necessary to make the protection clear to employees and employers.

The proposed subpart is also needed because managing employee leave is a frequent topic for which employers seek the Department's guidance. In particular, some employers are uncertain whether they can require ESST use if an employee is absent for a qualifying purpose. Based on the plain language of the statute, the Department has advised employers that they cannot, and the employee must still elect to use ESST. However, the frequency of questions indicates the need for an explicit rule in this area.

The proposed subpart follows the statutory provision addressing use of ESST in Minnesota Statutes, section 181.9447, subd. 1, which begins: "An employee **may** use accrued earned sick and safe time for: . . .", followed by the list of covered ESST uses.[34] Per chapter 645, Interpretation of Statutes and Rules, "'May' is permissive."[35] Additionally, the ESST law does not include any other provisions indicating employer control over the use of ESST when the employee is absent for a qualifying purpose. The plain language of the statute preserves an employee's permissive right when absent from work to use ESST, not use ESST, or choose a different type of leave, if available. This proposed subpart is reasonable

[34] (Emphasis added). *See also* Minn. Stat. § 181.9445, subd. 4, ("'Earned sick and safe time' means leave . . . that may be used . . ."); Minn. Stat. § 181.9446(e) ("Employees may use earned sick and safe time as it is accrued").
[35] Minn. Stat. § 645.44.

because it follows the plain language of the statute and ensures employees receive the full benefits of the ESST law without employer intrusion into employee decision-making regarding when their ESST is used.

Subpart 2 of this proposed rule further supports the reasonableness of subpart 1 by addressing a frequent follow-up employer question around leave management: the potential consequences if an employee is absent for an ESST-qualifying purpose but elects not to use ESST-protected leave.

Subpart 2. Unprotected leave.

This proposed subpart is intended to operate in conjunction with subpart 1, as noted above. If an employee decides not to use their ESST, they will not be covered by the protections of the ESST law. In this case, employers would be free to apply their regular attendance and disciplinary policies.[36] This proposed subpart is necessary to address situations where employers may mistakenly conclude that an absence is protected by the ESST law if the employee elects not to use ESST, or conversely, if the employer who applies their regular attendance or discipline policies to an employee's absence may have concerns about a retaliation claim by the employee if they are eligible to use ESST for the absence but nonetheless opt not to do so. Employees must accept the trade-off of being without the job protections in the ESST law if they opt not to use their ESST time when they are absent for a qualifying purpose.[37] The proposed subpart is reasonable because it is only applicable if the employee chooses not to use their ESST and balances employee ESST rights against employers' need to ensure a reliable workforce through attendance policies and discipline.

5200.1206. INCENTIVES.

Under Minnesota Statutes, section 181.9447, subd. 6(b), employers are prohibited from enforcing an "absence control policy or attendance point system" against employees for the use of ESST. Questions have been raised about whether incentives related to attendance or production that provide employees with monetary bonuses or other rewards are prohibited under the ESST law when employees are denied these incentives due to their use of ESST.

This proposed rule is necessary to allow employers to continue to implement policies that provide employee incentives related to attendance or production while ensuring the employee's right to be free from retaliation related to ESST use. Section 181.9447, subd. 6(b), applies to policies intended to require attendance and punish excessive absences or tardiness rather than policies that are intended to reward attendance or production. However, the Department must also consider the ESST law's broad prohibition on retaliation related to the use of ESST as stated in section 181.9447, subd. 6(a). While the proposed rule allows continued use of incentive policies, employers must ensure ESST is not treated differently than

[36] The Department is only referring to the application of attendance and disciplinary policies related to an employee's decision to not use their ESST for a qualifying purpose. Nothing in this discussion is intended to address other leave-related job protections that may apply to the employee's absence.

[37] This proposed subpart differs from a provision below in proposed rule 5200.1208, subp. 1, regarding misuse of ESST because that subpart addresses situations where an employee uses ESST for an absence that is not eligible for ESST use.

any other kind of leave under an incentive policy. The proposed rule does not allow an employer to "penalize" an employee who uses ESST, as prohibited by section 181.9447, subd. 6(a). The proposed rule primarily functions as allowing a reward, which exists above and beyond an employee's basic terms of employment related to pay, work duties, schedule, etc. Further, the proposed rule does not allow an employer to apply such a policy to ESST any different than other forms of leave, such as vacation, thereby ensuring ESST is on the same footing under an incentive policy as all other forms of leave. Overall, the proposed rule is necessary to maintain a benefit to employees while allowing employers to provide the underlying incentive to employees who are able to achieve the associated attendance or production goals.

The proposed rule is reasonable because it allows employers to maintain policies that provide an incentive-based benefit to employees, so long as those policies are applied consistently across all leave types, thereby preventing discriminatory treatment of ESST under such a policy. The approach is also similar to other leave laws on this issue, including the Family and Medical Leave Act and Minnesota Paid Leave.[38]

5200.1207. REASONABLE DOCUMENTATION.

Minnesota Statutes, section 181.9447, subd. 3, permits an employer to require reasonable documentation for certain uses of ESST, but it does not clearly specify the consequences for an employee who does not provide such documentation. This proposed rule is necessary to clarify that employees must comply with reasonable documentation requirements to receive the full protections of the ESST law. Without this proposed rule, there would be ambiguity regarding the enforcement of documentation provisions, potentially leading to inconsistent application, disputes, and confusion among employers and employees.

The proposed rule also provides procedural safeguards: the employer must clearly communicate the documentation requirements and give the employee a fair amount of time to respond. These protections prevent inappropriate use of the requirement by the employer and reduce the risk of arbitrary or retaliatory enforcement of the reasonable documentation requirement.

The proposed rule is reasonable because it operationalizes the intent of the ESST law's reasonable documentation provision as a method of employee accountability while requiring clear communication from the employer and allowing employees reasonable time to supply any required documentation. Further, the proposed rule does not expand or limit an employer's right to require documentation under the ESST law but instead ensures uniform application of the law while preserving employee and employer rights related to reasonable documentation.

[38] *See* 29 Code of Federal Regulations § 825.215(c)(2); Minn. Stat. § 268B.09, subd. 6(c)(2).

5200.1208. MISUSE OF EARNED SICK AND SAFE TIME.

The ESST law does not define nor otherwise account for employees who are improperly claiming ESST use for situations which are not eligible under Minnesota Statutes, section 181.9447, subd. 1. The Department received many comments from employers noting concerns and requesting further guidance via rule related to employees who misuse ESST, including what steps employers can take to address misuse. This proposed rule is necessary to respond to those comments and provides: (1) a definition of misuse of ESST; (2) parameters for employers who suspect misuse of ESST and wish to inquire further; and (3) restrictions on an employer's ability to deny an employee's request to use ESST due to mere suspicion or prior misuse of ESST by an employee. The proposed subparts are reasonable to clarify expectations for both employees and employers related to misuse.

Subpart 1. Misuse.

This proposed subpart defines when misuse occurs. Any claimed use of ESST for a purpose that is not covered by Minnesota Statutes, section 181.9447, subd. 1, is defined as a misuse of ESST. In those situations, the employee is not entitled to job protections found in the ESST law because the leave did not qualify as ESST-covered under the ESST law. While this proposed subpart and other subparts in this proposed rule do not prescribe the specific employment consequences for misuse, in practice an employee who misuses ESST could be subject to their employer's normal employment policies, which could result in the employer taking disciplinary action. In such a situation, the employee would not have the benefit of the job protections in the ESST law.[39]

The proposed subpart is necessary to provide employers and employees with a clear statement indicating that ESST job protections do not apply to ESST leave when it is not taken for a qualifying purpose. The proposed subpart is reasonable because it follows plainly from the ESST law, which provides a list of qualifying purposes in the section 181.9447, subd. 1. Any use not listed therein is not subject to the ESST law, including the law's employment protections.

Subpart 2. Pattern or clear instance of suspected misuse.

This proposed subpart is necessary to provide employers with some level of recourse related to misuse of ESST by allowing employers to request reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subd. 3(b) to (f), when an employer identifies a pattern or clear instance of suspected misuse by an employee. The proposed subpart provides examples of a pattern or clear instance of suspected misuse to demonstrate the types of situations described in comments to the Department that employers may experience. Specifically, items A and B are related to patterns of

[39] The Department did not include any specific consequences for misuse in this proposed subpart or elsewhere because employers are best positioned to determine discipline in the context of their employment-specific policies. However, the Department notes that subpart 3 of the proposed rule specifically limits an employer's ability to take disciplinary or corrective action in the form of denying future ESST use. See the explanation for that proposed subpart for further information.

suspected misuse, item C is related to a clear instance of suspected misuse, and item D may relate to either a pattern or clear instance of suspected misuse.

The Department has received extensive feedback from employers seeking clarification about whether they are allowed to inquire about an employee's use of ESST at any time besides situations in which an employee has used ESST for at least two consecutive days.[40] More specifically, the law provides no specific mechanism for employer recourse when an employee misuses ESST (i.e., not for a qualifying purpose).

This proposed subpart is reasonable because it aligns with the purpose of section 181.9447, subd. 3. Section 181.9447, subd. 3, functions as a safeguard against ESST misuse and otherwise ensures ESST is used in accordance with the ESST law (i.e. only for qualifying purposes).

Additionally, this proposed subpart is reasonable because an employer who suspects misuse under this proposed subpart must still comply with the limits on reasonable documentation imposed by section 181.9447, subd. 3(b) to (f). In many situations, an employee will be able to self-verify their use of ESST through a written statement indicating the use was for a qualifying purpose. Additionally, this proposed subpart should be read in connection with proposed subpart 3 of 5200.1208, which limits an employer's ability to restrict an employee's use of ESST based on past misuse or future anticipated misuse, thereby protecting employees from overreach under this proposed subpart by employers.

To further support the reasonableness of this proposed subpart, the Department identified other states with sick and safe time administrative rules or statutory provisions related to employee misuse. Massachusetts and Rhode Island explicitly allow for an employer to pursue discipline when an employee is suspected of misuse. Massachusetts's provision states, "If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use under M.G.L. c. 149, section 148C."[41] Rhode Island has a statutory provision stating, "If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of paid sick and safe leave, unless the employee provides reasonable documentation."[42] Oregon's misuse rule allows an employer to "require verification from a health care provider of the need of the employee to use sick time" if the employer "reasonably suspects that an employee is abusing sick time, including engaging in a pattern of abuse."[43] These

[40] The Department's comment periods in 2024 and 2025 preceded a legislative amendment that reduced the threshold from three consecutive days to two consecutive days of ESST before the employer can require reasonable documentation. Laws of Minnesota 2025, chapter 6, article 5, section 11.
[41] 940 Code of Massachusetts Regulations § 33.03(24).
[42] Rhode Island General Laws § 28-57-6(j).
[43] Oregon Administrative Rules 839-007-0045(11).

provisions also highlight the need for rulemaking on this issue where the statute does not clearly indicate a reasonable method of employer inquiry related to suspected employee misuse.

Subpart 3. No restriction on use.

This proposed subpart prohibits an employer from denying an employee use of ESST based on prior misuse or future suspected misuse. This proposed subpart was added to (1) ensure employees receive the protections under the ESST law for compliant use of ESST, even in situations where the employee misused ESST in the past or is suspected of misusing ESST, and (2) make clear to employers that mere suspicion of misuse is not sufficient to deny an employee the right to use ESST. If the employer has a suspicion of misuse under subpart 2 of this proposed rule, the employer cannot deny the employee the right to use ESST but may require reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subd. 3(b) to (f).

If the reasonable documentation or other evidence indicates misuse, then employers may rely on the second sentence of this proposed subpart to discipline the employee, which says, "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." Whether such discipline may include the denial of ESST is limited to scenarios where the employer confirms the misuse (i.e. not mere suspicion of misuse) prior to the employee using ESST for the absence. In situations where the employer confirms misuse after the employee has used ESST, the employer may not deny future ESST use.

This proposed subpart is necessary to protect employees from employer overreach under this proposed rule, which could occur through denial of ESST based on past misuse. This proposed subpart is also necessary to provide employers with a clear pathway to discipline employees who misuse ESST. The proposed subpart is reasonable because it balances the ESST law's employee protections with employer interests in protecting business operations and the integrity of their employment policies by being able to discipline employees who misuse ESST.

5200.1209. MORE GENEROUS SICK AND SAFE TIME POLICIES.

The proposed rule addresses two separate but interrelated issues located in Minnesota Statutes, section 181.9448, subd. 1(a). One proposed subpart is necessary to articulate a key principle related to ESST protections and paid leave in excess of the minimum amount required under the ESST law. A second proposed subpart is necessary to confirm that Minnesota Paid Leave, under Minesota Statutes, chapter 268B, is considered a "salary continuation benefit" as that term is used in section 181.9448, subd. 1(a), and therefore not subject to ESST protections under that statutory provision. Both proposed subparts are reasonable clarifications of statutory language.

Subpart 1. Excess paid time off.

Minnesota Statutes, section 181.9448, subd. 1(a), includes the following provision, which was enacted during the 2024 legislative session:

> All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446.[44]

The statutory provision makes any employer-provided paid time off in excess of the required ESST amount subject to the ESST protections in sections 181.9445, and 181.9447-.9448, except for paid time off that is considered a salary continuation benefit, if the paid time off can be used for absences due to "personal illness or injury." The proposed subpart confirms that the statutory provision applies ESST protections to this type of paid leave *only* when the leave is used for a qualifying purpose under the ESST law. To interpret the provision otherwise is unreasonable and would lead to absurd results not intended by the Legislature.[45] For instance, if the ESST protections could apply to such leave when *not* used for an ESST-qualifying purpose, then an employer who provides a single bank of leave for all purposes (i.e. vacation, sick time, etc.) would be made to offer ESST protections to their employees for any conceivable use, such as personal vacations and other personal outings, which are not eligible uses of ESST under section 181.9447, subd. 1. Therefore, this proposed subpart is reasonable because it codifies that ESST protections only attach when paid time off is used for a qualifying purpose in accordance with the ESST law.

The Department received more comments related to this statutory provision than any other provision in the ESST law. Many of the comments indicated uncertainty about the meaning and operation of this statutory provision. Therefore, this proposed subpart is necessary to provide clarity for employers and employees. Without this proposed subpart, there is risk of employers using different approaches across Minnesota on a key issue affecting many employers (i.e., those who offer paid time off to their employees). A rule on this issue is critical.

Subpart 2. Salary continuation benefits.

This proposed subpart addresses a specific concern related to the interplay between the ESST law and the Minnesota Paid Leave program under Minnesota Statutes, Ch. 268B, which will take effect on January 1, 2026. Minnesota Paid Leave provides between 12 and 20 weeks of annual family and medical leave and partial wage replacement to individuals who qualify. The Department has heard from stakeholders regarding their concerns about whether Minnesota Paid Leave is subject to the language described in the analysis of subpart 1 above from Minnesota Statutes, section 181.9448, subd. 1(a), or whether it is considered a "salary continuation benefit" that is excepted from that provision. This proposed subpart is reasonable because benefits provided under the Minnesota Paid Leave program are "salary continuation benefits" similar to short-term or long-term disability benefits, which are utilized to continue

[44] Laws of Minnesota 2024, chapter 127, article 11, section 15.
[45] *See* Minn. Stat. § 645.17 ("In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable[.]")

a portion of the employee's salary for extended periods of leave. Short-term and long-term disability are also explicitly listed as examples of "salary continuation benefits" in section 181.9448, subd. 1(a).

Regulatory Analysis

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. The sections below quote these factors and then give the Department's response.

Classes Affected

A description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons who will be affected by these proposed rules includes nearly all employers and employees in Minnesota. Nearly all employers in Minnesota will bear the costs, if any, of compliance with these rules. Only a few types of workers are not eligible for ESST, including independent contractors, volunteer or paid on-call firefighters, elected or appointed officials, and certain farm workers.[46] Employers and employees will benefit from the proposed rules, which provide clarity about how the ESST law applies to certain issues and situations. While some proposed rule provisions may be more relevant to certain types of employees or employers, none of the proposed rules operate to be more beneficial or burdensome to any particular type of employer or employee. However, the Department has identified one proposed subpart that merits additional discussion.

5200.1202, Subp. 1 – Location of Hours Worked

This proposed subpart will affect employers with ESST-eligible employees who regularly work in other states. These employers will be required to provide their multi-state employees with ESST accrual for all hours worked, regardless of location, if those employees work more than 50% of their hours in Minnesota. Additionally, employers with multi-state employees who are unsure about whether their employees work 50% or less of their time in Minnesota will need to make a good faith determination to answer that question.

Employers who were providing ESST accrual for only hours worked in Minnesota prior to the anticipated adoption of these proposed rules may be required to provide additional ESST accrual under this proposed subpart, up to the minimum amounts required in Minnesota Statutes, section 181.9446 (i.e., 48 hours per accrual year), for any employee anticipated to work the majority of their hours in Minnesota

[46] Minn. Stat. § 181.9445, subd. 5.

during a year.[47] Additionally, these employers may incur nominal administrative costs related to making good faith determinations as to whether their employees are anticipated to work 50% or less of their hours in Minnesota. The affected employees will benefit by receiving full ESST accruals for their hours worked and potentially being able to use more leave for ESST qualifying purposes, which directly benefits the employee and their family's health and safety. The proposed subpart also benefits employers by providing a clear, uniform standard for determining when out-of-state hours must be included for accrual purposes, thereby reducing the risk of noncompliance. Overall, the ESST law was enacted to provide employees with time off for qualifying purposes because healthier and safer workforces and families provide a net benefit to the State of Minnesota. Therefore, the Department believes the benefits to these multi-state employees outweighs any potential costs or burden to the affected employers.

Department/Agency Costs

The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues.

The Department does not anticipate any additional costs to itself or any other state agency in implementing these rules. The only proposed rule that requires an additional administrative task is proposed rule 5200.1202, subp. 1, item B, related to location of hours worked. Under item B, an employer providing accrual of 1 hour of ESST for every 30 hours worked pursuant to Minnesota Statutes, section 181.9446(a) must make a good faith determination of their employees' anticipated work locations to justify restricting employee accrual. Most, if not all, state employees already receive paid leave sufficient to meet the minimum amounts required by the ESST law. Therefore, the application of this administrative task for state agencies is minimal or entirely absent, and the Department does not anticipate any impact on state revenues. Additionally, the Department did not receive any comments from state agencies indicating concerns about proposed rule 5200.1202, subp. 1.

The Department also evaluated whether the proposed rules would increase any costs to itself as a regulator. The Department concluded that the proposed rules will not increase costs to the Department in its investigations or provision of technical assistance to employers and employees, with the exception of the time needed to review and update its frequently asked questions on its website. Ultimately, the Department anticipates that adoption of the proposed rules will better ensure compliance without additional cost.

[47] The minimum annual accrual of 48 hours required under Minn. Stat. § 181.9446 equates to 1,440 hours worked in a year. The proposed subpart will not affect employers with ESST-eligible employees who already work this number of hours in Minnesota.

Less Costly or Intrusive Methods

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rules.

The proposed rules are intended to clarify the ESST law rather than create new requirements resulting in costs to stakeholders. To the extent employers have borne costs related to ESST, those costs are the result of the ESST statutes enacted by the Legislature. The proposed rules are largely cost-neutral, and some proposed rules may actually limit costs for employers by, for example, providing a framework for inquiring about misuse of ESST and deterring such misuse. Some employers may incur minimal costs related to making good-faith determinations under proposed rule 5200.1202, subp. 1 (Location of Hours Worked). However, the Department determined there was no less intrusive method for ensuring employees receive all ESST accrual to which they are entitled under the ESST law. The Department has not identified any other proposed rule which may increase costs for employers. Therefore, the Department has determined there are no less costly or less intrusive methods for achieving the purpose of the proposed rules, and any costs associated with the proposed rules are minimal and reasonably justified.

Alternative Methods

A description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The Department considered a number of options when drafting the proposed rules. The considerations involved review of ESST programs and regulations from other states, extensive stakeholder outreach and feedback, and internal analysis and experience gained from nearly two years of ESST enforcement and education since the law was enacted. Specifically, the Department evaluated alternatives for the proposed rules below.

5200.1202, Subp. 1 – Location of Hours Worked

The Department considered an alternative rule suggested by commenters that would limit employees' accrual of ESST to only those hours worked in Minnesota. After consideration, the Department concluded that such a rule would be overly narrow and unfairly limit an employee's right to accrue ESST. The proposed subpart reflects the full extent of employee rights on this issue while the alternative would deny an employee's ESST accrual for nominal hours worked outside of Minnesota, as well as greater amounts of hours worked outside the state, even when the employee has a more significant connection to Minnesota than to any other state. For example, an employee who works 85% of their hours in Minnesota could lose out on ESST accrual for the other 15% of their hours worked, even though the employee spends nearly all their work time in Minnesota. Such an employee is clearly subject to

employment laws in Minnesota because it is their primary location of work, and it does not follow that the employee's ESST accrual should be limited based on hours worked outside of Minnesota.

There are several states with similar approaches to this topic. Massachusetts, Rhode Island, and Vermont use a "primary place of work" standard to determine whether an employee is considered an employee of their state. In Massachusetts and Rhode Island, the primary place of work standard only requires the employee to work in the benefit-providing state more than any other state, which could be less than 50% of their work hours.[48] Vermont utilizes the "primary location of work" standard more generally.[49] Further, these states also mandate that an employee who primarily works in their state is entitled to accrue their equivalent of ESST benefits for all hours worked, regardless of location.[50] These states offer a close comparison and reinforce the reasonableness of this proposed subpart.

Further, this proposed subpart was drafted to advance administrative fairness and practical enforceability by: (1) utilizing a good-faith standard that does not require retroactive accrual for employees designated as working less than 50% in Minnesota who end up working more than 50% in the state; (2) allowing employers to adjust ESST accrual for a significant change in circumstances, including circumstances resulting in less ESST accrual because the changed circumstances cause the employee to work the majority of their hours outside Minnesota; and, (3) allowing for any conflicting laws in other jurisdictions outside Minnesota to override or preempt the proposed subpart. Therefore, the proposed subpart is a reasonable and appropriate method to reflect the full extent of required ESST accrual under the ESST law while also providing safeguards for employers and other jurisdictions outside Minnesota.

5200.1202, Subp. 3 – Indeterminate Shift

The Department's initial draft of this proposed subpart, which was published as part of the second comment period, was more prescriptive by requiring a sequential order of application for the methods to determine the amount of ESST used when an employee takes leave from a work shift of an indeterminate length. Commenters requested more flexibility in the application of these methods and noted concerns about any method that required calculation, such as determining average hours worked. The Department

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[48] *See* 940 C.M.R. § 33.03(1) ("An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Massachusetts regardless of the location of the employer. An employee need not spend 50% or more time working in Massachusetts for a single employer in order for Massachusetts to be the employee's primary place of work."); 260 Rhode Island Code of Regulations § 30-05-5.5.2.A and B (2025) ("A. An employee is considered to be employed in Rhode Island if their primary place of employment within the last twelve (12) months was in Rhode Island regardless of the location of their employer. B. An employee need not spend fifty percent (50%) or more of their time working in Rhode Island to be considered a Rhode Island employee, so long as the employee spends more time working in Rhode Island than in any other state.").

[49] Code of Vermont Rules 24-010-014-4(a) ("An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Vermont, regardless of the primary location of the employer.").

[50] *See* 940 C.M.R. 33.03(2) ("If an employee is eligible to accrue and use earned sick time, then all hours the employee works must be applied toward accrual of earned sick time regardless of the location of the work and regardless of the location of the employer."); 260 R.I. Code Regs. § 30-05-5.5.2.C (2025) ("If an employee is eligible to accrue and use PSSL benefits, all hours worked by that employee and all hours they are paid for, regardless of the location of the work or the employer, shall be counted while accruing PSSL benefits."); and C.V.R. 24-010-014-4(a)("If an employee is eligible to accrue and use earned sick time, then all hours the employee works shall be applied toward accrual of earned sick time regardless of the location of the work.")

agrees that more flexibility in this proposed subpart is reasonable, so this subpart was adjusted to leave the choice of method to the employer's discretion. Although two of the options are only applicable in certain situations (i.e., one method requires there to be a "replacement worker" and another method requires there to be "similarly situated employees"), the employer can choose their preferred method when more than one method is applicable.

The Department considered whether the proposed subpart was detrimental or beneficial to employees. On the one hand, an employer may utilize a method resulting in the greatest amount of ESST deducted from the employee's ESST balance, which provides the employee with the most compensation for their absence. On the other hand, an employer may utilize a method resulting in the least amount of ESST deducted from the employee's ESST balance, which provides the employee with the least compensation for their absence, but also more ESST time for future use. Whether one outcome is better than the other may depend on employee preference, and the Department did not receive any comments indicating a preferred approach. Any rule allowing the employee to choose the applicable method would have created additional administrative responsibility for the employer by requiring additional communication with employees using ESST to determine their preferred method. Such an approach is likely to result in unnecessary disputes between employers and employees. Therefore, the approach in the proposed subpart focused on providing reasonable methods of calculation while giving employers flexibility to choose the method that best fits their operations.

In drafting the options included in this proposed subpart, the Department carefully considered similar statutes and rules from other jurisdictions. The Department modeled the options for calculating ESST hours for indeterminate shifts based on rules found in New Mexico, Oregon, and Washington.[51] The similarities across these other jurisdictions' rules further supports the reasonableness of this proposed subpart.

5200.1205, Subp. 1 – No Required use

The Department received comments questioning whether employers could require employees to use ESST concurrently with the Family and Medical Leave Act ("FMLA") because the FMLA allows employers to require the substitution of paid leave while on FMLA leave.[52] Given those comments, the Department considered adopting a rule that would provide an exception to the employee right to choose whether to use or not use ESST that would allow employers to require ESST use in situations where the employee's leave is also subject to the FMLA.

The Department identified several reasons for not adopting such a rule. First, the ESST law allows employees to determine whether to use ESST, and such a rule would curtail employee rights related to use

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[51] *See* New Mexico Administrative Code § 11.1.6.8.D; Or. Admin. R. 839-007-0035; Washington Administrative Code § 296-128-670(4).
[52] *See* 29 United States Code § 2612(d)(2); 29 C.F.R. § 825.207.

of ESST. Second, nothing in the ESST law authorizes employers to require use of ESST in relation to FMLA leave or in any other situation. Third, beginning in 2026, Minnesota Paid Leave[53] will prohibit employers from requiring the use of paid time off, including sick time, concurrently with Minnesota Paid Leave.[54] While Minnesota Paid Leave and FMLA leave may run concurrently, FMLA leave does not supersede Minnesota Paid Leave on the issue of employer-mandated concurrent use of paid leave, including use of ESST.[55] Fourth, at least one other ESST jurisdiction has promulgated a similar rule protecting employees' right to use ESST at their sole discretion.[56]

The Department also received comments regarding a similar issue related to FMLA leave and the requirement under Minnesota Statutes, section 181.9448, subd. 1(a), that all paid time off made available for "personal illness or injury" in excess of the ESST minimum amount be subject to ESST protections when used for a qualifying purpose. This ESST statutory provision may lead to a scenario for an employer who offers generous paid time off in which an employee takes FMLA leave for the allowed 12 weeks and subsequently uses their paid leave balance to take additional ESST leave related to their serious health condition, resulting in job-protected absences extending beyond 12 weeks. Even so, for this scenario to occur, the employee would need to qualify for leave under both the FMLA and ESST over an extended time period, which would further indicate the seriousness of the circumstances and the employee's need for leave. While the Department acknowledges the interplay between section 181.9448, subd. 1(a), and the employee's right to use ESST at their discretion may lead to this outcome in the narrow circumstances in which an employee only has access to FMLA and not Minnesota Paid Leave, such outcomes are not anticipated to be a common occurrence and do not outweigh the need to protect employees' rights to use ESST.[57]

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[53] *See* Minn. Stat. §§ 268B.001-.30.

[54] Minn. Stat. § 268B.27, subd. 2.

[55] *See* 29 U.S.C. § 2651(b) ("Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act, or any amendment made by this Act."); *See also* 29 C.F.R. § 825.701 ("Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA.").

[56] The State of Washington's ESST rules include the following provision under W.A.C. 296-128-630(1): "An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210 (1)(b) and (c). This right means an employee has the choice about whether to use accrued, unused paid sick leave when a qualified purpose occurs and an employer may not require an employee to use accrued, unused paid sick leave if the employee does not choose to request to use paid sick leave."

[57] Minnesota Paid Leave has different eligibility requirements than FMLA. The Minnesota Paid Leave wage requirements under Minn. Stat. § 268B.04, subd. 2, require an employee to have "wage credits of at least 5.3 percent of the state's average annual wage rounded down to the next lower $100." Minnesota Paid Leave does not include a waiting period before an employee is eligible for benefits. In comparison, FMLA requires an employee to have worked for the employer for at least 12 months and have worked for at least 1,250 hours in the 12 months prior to taking FMLA, and some small businesses are excluded from FMLA. *See* 29 U.S.C. § 2611(2). Therefore, the Department anticipates that the vast majority of employees in Minnesota will be eligible for Minnesota Paid Leave if they are eligible for FMLA, and some employees will only be eligible for Minnesota Paid Leave but not FMLA.

5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse

The Department's initial draft of this proposed subpart was limited to "patterns of misuse" of ESST and included a limited set of circumstances which qualified, thereby limiting employers to relying on this proposed subpart in only the circumstances explicitly described therein. The Department received comments requesting the Department broaden this provision so that the circumstances described function as a non-exclusive list of examples in which the proposed subpart would apply. After further consideration, the Department determined that the proposed subpart is more reasonable with a non-limited list of examples and better aligns with state regulatory policy as described in Minnesota Statutes, section 14.002, by providing more flexibility to employers to identify patterns or clear instances of suspected misuse of ESST. In response, the Department redrafted the proposed subpart to provide broader applicability and added additional examples of suspected misuse to better illustrate the intent of the proposed subpart. While some employees and employee-advocacy groups or labor organizations may have concerns about potential employer overreach, the proposed subpart merely functions to allow employers to rely on the reasonable documentation procedure found in section 181.9447, subd. 3, when misuse is suspected, and these procedures are flexible and accommodating to employees.

Costs to Comply

The probable costs of complying with the proposed rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The Department determined that the proposed rules themselves are cost-neutral for all parties, as affected parties are already required to comply with the ESST law, and the proposed rules do not add additional costs. The Department notes that proposed rule 5200.1202, subp. 1, potentially impacts the required amount of ESST accrual for employees who work more than 50% of their hours in Minnesota and whose employers had limited their ESST accrual based on the employee working some hours outside of the state. The proposed subpart requires all hours worked by employees who predominantly work in Minnesota to be subject to ESST accrual regardless of location. ESST accrual is also limited by the 48-hour annual accrual limit and 80-hour total limit set forth in Minnesota Statutes, section 181.9446(b)(2), which will minimize any impact of additional accrual required under this proposed subpart for multi-state employees. Moreover, to the extent employers may be required to provide additional accrual, the additional accrual itself is not a cost. Therefore, any potential costs directly associated with proposed rule 5200.1202, subp. 1, are limited to nominal administrative functions of making good-faith determinations pursuant to items B and C of the proposed subpart. Good-faith determinations are not intended to be onerous for employers and only require evaluation of the employee's anticipated work schedule and locations of work. Employers with highly transient workforces will likely develop streamlined approaches to this task or perhaps opt instead to avoid application of the proposed subpart by relying on the frontloading methods in section 181.9446(b)(2). The Department expects any additional administrative

costs to employers affected by proposed rule 5200.1202, subp. 1, to be de minimis. No other proposed rules require analysis on this issue.

Costs of Non-Adoption

The probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

No particular class of employer, employee, or other stakeholder is predominantly affected by the proposed rules. However, all stakeholders would be negatively impacted without these proposed rules. Each proposed rule is intended to clarify the ESST law and establish clear standards for all parties regarding the administration of ESST benefits. The consequences of non-adoption include less consistent administration of ESST by employers and uncertainty about key topics in the ESST law, including the extent of ESST accrual required, crediting ESST accrual to employees, changing accrual years and methods, reasonable documentation, employee misuse, and the application of Minnesota Statutes, section 181.9448, subd. 1(a) to more generous leave policies. Several rules merit further discussion.

5200.1202, Subp. 1 – Location of Hours Worked

If this proposed subpart is not adopted, employees who work in multiple states but work more than 50% of their hours in Minnesota may not get the benefit of the maximum ESST accrual to which they are entitled. Additionally, because the ESST law does not expressly address this issue, non-adoption of this proposed subpart will likely result in inconsistent application across the state for businesses who have employees working in multiple states. Such inconsistencies would create costs related to employer-employee disputes on the issue. The proposed subpart resolves a key issue and provides employers and employees with a roadmap for determining the amount of ESST accrual to which each employee is entitled based on the location of their work.

5200.1205, Subp. 1 – No Required Use

If this proposed subpart is not adopted, a key issue will be left open to different applications, some of which have been proposed to the Department in the comment periods. Additionally, the Department has already encountered scenarios in which employers have attempted to compel an employee to use ESST against the employee's wishes. Therefore, the issue is not hypothetical or speculative.

The ESST law requires an answer to the question of whether employers have the ability to require employees to use ESST when they are absent for a qualifying purpose. Without a rule answering this question, there is significant risk of employer-employee disputes, varying administrative approaches, and additional compliance and enforcement efforts by the Department. Simply put, this issue demands an answer. This proposed subpart provides a clear answer that is supported by the statutory language and does not conflict with any provision in the ESST law.

5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse

If this proposed subpart is not adopted, employers and employees will lack regulatory guidance about whether there are situations other than the circumstance described in Minnesota Statutes, section 181.9447, subd. 3(a), in which an employer may require reasonable documentation from an employee. Without this proposed subpart, employers may feel they lack the ability to inquire further about suspected misuse because the ESST law does not articulate the extent of the employer's authority to take limited, evidence-based steps to verify proper use of ESST using reasonable documentation in accordance with section 181.9447, subd. 3(b)-(f). Separately, the proposed subpart provides notice that misuse of ESST may result in further employer inquiry and incentivizes employees to only use ESST for qualifying purposes, thereby protecting the integrity and legitimate purposes of the ESST law.

5200.1209, Subp. 1 – Excess Paid Time Off

If this proposed subpart is not adopted, employers may implement inconsistent interpretations of Minnesota Statutes, section 181.9448, subd. 1(a). The Department received comments suggesting differing interpretations or other rule approaches, which further highlights the likelihood of inconsistency and the need for a clear rule in this area. The Department also received comments with concerns about this statutory provision and noting uncertainty about how to comply. Therefore, this proposed subpart is critical to clarify how employers should apply this statutory provision when employees use paid leave that exceeds the minimum amounts required by the ESST law for a qualifying purpose.

Differences from Federal Regulations

An assessment of any differences between the proposed rules and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are currently no federal regulations related to employees receiving paid sick and safe time leave from work. FMLA is unpaid leave most commonly used for an employee or their family member's serious health condition, or childbirth and newborn care, and is typically taken for longer-term absences. In comparison, ESST is primarily used for short-term absences related to a health condition or personal safety, and the law only requires up to 48 hours of annual accrual and 80 hours of total accrual. FMLA is more comparable to Minnesota Paid Leave under Minnesota Statutes, chapter 268B, than the ESST law. The Department has not identified or otherwise been made aware of relevant differences between FMLA regulations or any other federal regulations and the proposed rules. Therefore, a specific need and reasonableness analysis on this issue is not necessary.[58]

[58] However, see the discussion above of FMLA as it relates to proposed rule 5200.1205, subp. 1, regarding concurrent use of ESST and FMLA.

Cumulative Effect

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the proposed rules.

Proposed rule 5200.1205, subp. 1, clarifies that the ESST law prohibits employer-mandated ESST use during an employee's FMLA leave or any other situation. No other proposed rules affect federal or state regulations. The proposed rules do not create any cumulative regulatory burden related to the specific purpose of the proposed rules.

The Department has broad rulemaking authority related to the ESST law under Minnesota Statutes, section 177.50, subd. 6. The enabling statute allows the Department to "adopt rules to carry out the purposes" of the ESST law. To that end, the proposed rules are intended to provide clarification and guidance related to key issues in the ESST law, and the proposed rules are not intended to affect other federal or state regulations.

Notice Plan

Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Required Notice

The Department is required under Minnesota Statutes, chapter 14 to identify and send notice to several groups. The steps the Department will take to meet those statutory requirements are laid out in detail below.

Consistent with Minnesota Statutes, section 14.14, subd. 1a, on the day the Dual Notice is published in the *State Register,* the Department will send via email or U.S. mail a copy of the Dual Notice and the proposed rule to the contacts on the Department's list of all persons who have registered with the Department for the purpose of receiving notice of rule proceedings. There are approximately 15 people on the Department's list of persons who have requested notice via United States Postal Service, and approximately 78,000 persons who have requested notice of all rule proceedings via GovDelivery. The Dual Notice will be sent at least 33 days before the end of the comment period.

Consistent with section 14.116(b), the Department will send a copy of the Dual Notice, a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the applicable policy committees and the Legislative Coordinating Commission. These documents will be sent at least 33 days before the end of the comment period.

Consistent with section 14.131, the Department will send a copy of the SONAR to the Legislative Reference Library when the Dual Notice is sent.

Section 14.116(c) requires the Department to "make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority" if it is within two years of the effective date of the law granting rulemaking authority. A copy of the notice will be provided to Representative Aisha Gomez and Senator Ann Rest.

Section 14.111 requires the Department to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. Although these proposed rules are new rules and not rule changes, the Department will provide the commissioner of agriculture with a copy of the proposed rules.

Additional Notice

The Department submitted an Additional Notice Plan ("ANP") to the Court of Administrative Hearings ("CAH") for review on July 5, 2024. The ANP was reviewed and approved by Administrative Law Judge, Megan J. McKenzie, on July 10, 2024.[59]

The Department intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rules:

- Department of Labor and Industry's Rulemaking List (for Labor Standards updates)
- Individuals subscribed to the *Wage & Hour Bulletin*;
- Individuals subscribed to the Department's Labor Standards and Earned Sick and Safe Time ("ESST") Rulemaking Notice lists;
- Individuals and entities subscribed to the Department's webinar announcement lists;
- Grantee organizations who have worked on ESST outreach in 2023 or 2024;
- Approximately 380 employer associations, chambers of commerce, and other organizations representing employers in Minnesota
- Interested state legislators, including bill authors;

[59] Exhibit 2, Judge McKenzie's approval of the ESST Additional Notice Plan, dated July 10, 2024.

- City-level enforcement offices in Minneapolis, St. Paul, and Bloomington, Minnesota;
- Individuals at state agencies that have a close connection to the impacts of ESST rules; and
- Individuals who requested a copy of the ESST rule draft during the Department's first comment period for this rulemaking.

Under Minnesota Statutes, section 14.14, subd. 1a, the Department believes its regular means of notice, including publication in the *State Register* and the *Wage & Hour Bulletin*, will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

Performance-Based Rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Department's regulatory objectives while allowing maximum flexibility to regulated parties and to the Department in meeting those objectives.

The Department's regulatory objectives in this rulemaking are to provide clarity and guidance on key issues in the ESST law. The Department has met those objectives without proposing overly prescriptive and inflexible rules. Wherever possible, the Department has opted to provide options in the proposed rules rather than inflexible mandates. For example, proposed rule 5200.1202, subp. 3, regarding shifts of an indeterminate length includes a list of options for determining the amount of ESST hours used by an employee who is absent for such a shift rather than mandating one particular approach. Similarly, proposed rule 5200.1208, subd. 2, regarding patterns or clear instances of suspected misuse of ESST, was developed to include examples of how misuse may occur rather than a limited set of circumstances in which misuse can apply, thereby allowing employers flexibility to apply the proposed subpart to other situations of suspected misuse that may occur.

The Department has also focused on developing rules consistent with the statutory language where clarification is necessary to ensure consistent and fair administration of ESST benefits by employers. The proposed rules provide clarity for employers and allow the Department to better serve its roles as a regulator and source of technical assistance. While some rules prescribe certain parameters for ESST administration, accrual, and use, on the balance the proposed rules are geared towards clarification rather than adding new requirements or prohibitions and are not overly prescriptive and inflexible.

Consultation with MMB on Local Government Impact

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget ("MMB"). The Department provided this SONAR and the proposed rules to MMB on August 19, 2025. On October 1, 2025, MMB provided a letter to the Department stating, in part:

"Upon review, there are no substantial concerns about the proposed rules. The proposed rules primarily provide new clarity and guidance about existing ESST policies based on formal and informal stakeholder feedback. Overall, the proposed rules should not create additional costs because affected parties already must comply with ESST law. The proposed rules for accrual may have a nominal fiscal cash flow impact on local governments because they may result in additional administrative costs, depending on how local governments currently track employee hours. Though exact costs are unknown, DLI states that cost of compliance will not be greater than $25,000 for any small city."[60]

Impact on Local Government Ordinance and Rules

Minnesota Statutes, section 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Department has determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules. The Department based this determination on the following factors:

1. Notice was provided to local governments regarding both comment periods related to this rulemaking;[61]
2. The Department received comments from some local governments and local government associations, and none of those comments identified or otherwise indicated necessary changes to local laws in relation to any proposed rules; and
3. The Department regularly confers with local governments that have their own ESST laws.[62] These local governments understand they can still follow and enforce their laws where those laws do not violate the minimum standards and requirements of the state ESST law because the state ESST law sets a legal floor, not a ceiling. The Department's Labor Standards Division regularly coordinates enforcement with these local governments, and no local governments have communicated concerns about necessary changes to their local ordinances and rules in relation to these proposed rules.

[60] Exhibit 3, MMB's letter to the Department, dated October 1, 2025.
[61] The second RFC published by the Department in the State Register on March 3, 2025, included the following: "Public Comment. The Department is publishing a second request for comments to seek information and comments from interested persons or groups regarding the draft ESST rules available via link below. In particular, the Department is interested in any comments regarding: … (2) Whether any particular rule might require a local government to adopt or amend an ordinance or other regulation."
[62] Local governments with their own ESST laws as of the date this SONAR was published are the cities of Minneapolis, St. Paul, and Bloomington.

Costs of Complying for Small Business or City

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed $25,000 for any small business (i.e., less than 50 full-time employees) or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed $25,000 for any small business or small city. The Department has not identified any proposed rules that would result in additional costs to small cities, and the Department has not received any comments to the contrary.

The Department received no comments from any small business raising cost concerns about the proposed rules. Nonetheless, the Department considered whether proposed rule 5200.1202, subp. 1, regarding location of hours worked, could potentially result in additional costs for small businesses. Specifically, the Department considered whether some small businesses with employees who predominantly work in Minnesota but also work in other states were providing ESST accrual for only hours worked in Minnesota prior to the anticipated adoption of these proposed rules. However, the proposed rule only addresses accrual of ESST, not ESST use. ESST accrual by itself does not result in costs to the employer.

ESST accrual is also limited by the 48-hour annual accrual limit and 80-hour total limit set forth in section 181.9446(b)(2). These statutory limits further minimize the extent of any increase in ESST accrual required under this proposed rule for employers with employees predominantly working in Minnesota who also work in other states. To the extent the proposed rule may result in a small increase in accrual for some employees, it could also result in a corresponding decrease in accrual for employees who do not predominantly work in Minnesota. Additionally, research studies have shown that the net benefit of laws like the ESST law related to increased productivity and improved public health offset any perceived costs to employers.[63]

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[63] *See* Chunyu, Liangrong, Paolo F. Volpin, and Xingchen Zhu. “Do Paid Sick Leave Mandates Increase Productivity?” LeBow College of Business, Drexel University, 23 Jan. 2023, lebow.drexel.edu/news/do-paid-sick-leave-mandates-increase-productivity (last visited August 14, 2025); Davison, H. Kristl, and Adam Scott Blackburn. "The Case for Offering Paid Leave: Benefits to the Employer, Employee, and Society." Compensation & Benefits Review, vol. 55, no. 1, Jan. 2023, pp. 3–18. PubMed Central, pmc.ncbi.nlm.nih.gov/articles/PMC9535467/ (last visited August 14, 2025); Maclean, Catherine, Stefan Pichler, and Nicolas R. Ziebarth. “Mandated Sick Pay: Coverage, Utilization, and Welfare Effects.” Washington Center for Equitable Growth, 12 Jan. 2022, www.nber.org/papers/w26832 (last visited August 14, 2025); and *see also*, Asfaw, Abay, Roger Rosa, and Regina Pana-Cryan. "Potential economic benefits of paid sick leave in reducing absenteeism related to the spread of influenza-like illness." Journal of occupational and environmental medicine 59.9 (2017), at journals.lww.com/joem/abstract/2017/09000/potential_economic_benefits_of_paid_sick_leave_in.2.aspx (last visited August 14, 2024, subscription access required).

The Department also considered whether the administrative costs of complying with proposed rule 5200.1202, subd. 1, would create significant costs in the first year after the proposed subpart takes effect. 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. Similarly, while there may be some additional staff time spent making good-faith determinations pursuant to items B and C of this proposed subpart, the Department expects those costs to be nominal.

Therefore, the Department concluded that proposed rule 5200.1202, subp. 1, will not result in costs for any small business exceeding $25,000 in the first year after the proposed rules take effect. No other proposed rules require analysis on this issue.

Authors, Witnesses, and Exhibits

Authors

The primary authors of this SONAR are:

- Byron Millea, Attorney, Department of Labor and Industry, Office of General Counsel
- Ryan P. Anderson, Attorney, Department of Labor and Industry, Office of General Counsel
- Peter Nikolai, Program Administrator, Labor Standards Division, Department of Labor & Industry
- Krystle Conley, Rulemaking Coordinator, Department of Labor and Industry, Office of General Counsel

Witnesses

In the event a hearing is necessary, the Department anticipates having the listed authors testify as witnesses in support of the need and reasonableness of the rules:

1. Peter Nikolai, Program Administrator, Labor Standards Division, Department of Labor & Industry.
2. Byron Millea, Attorney, Office of General Counsel, Department of Labor & Industry.

Exhibits

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

1. Exhibit 1, Public Engagement Conducted by the Labor Standards Division
2. Exhibit 2, Approval of the ESST Additional Notice Plan by Judge McKenzie

Conclusion

In this SONAR, the Department has established the need for and the reasonableness of each of the proposed additions to Minnesota Rules, chapter 5200. The Department has provided the necessary notice, and in this SONAR, documented its compliance with all applicable administrative rulemaking requirements of Minnesota Statutes and rules.

Based on the forgoing, the proposed rules are both needed and reasonable.

October 10, 2025

Commissioner Nicole Blissenbach
Department of Labor and Industry

Date

Docket No.– 25-9001-40129

Exhibit E
Letter to the Legislative Reference Library regarding the SONAR

DEPARTMENT OF LABOR AND INDUSTRY

VIA EMAIL
October 27, 2025

Legislative Reference Library

sonars@lrl.leg.mn

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

Dear Legislative Reference Library:

The Minnesota Department of Labor and Industry intends to adopt rules relating to Earned Sick and Safe Time. We plan to publish a Dual Notice in the October 27, 2025, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at Byron.millea@state.mn.us/651-284-5072.

Sincerely,

Byron Millea

Byron Millea
Attorney
Office of General Counsel
Department of Labor and Industry

Enclosure: Statement of Need and Reasonableness

Docket No.– 25-9001-40129

Exhibit F

Dual Notice as mailed and as published in the *State Register* on October 27, 2025

DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received

Minnesota Department of Labor and Industry

Labor Standards Division

Proposed Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

Introduction. The Minnesota Department of Labor and Industry ("the Department") intends to adopt rules without a public hearing following the procedures in the rules of the Court of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments and/or a written request that a hearing be held on the proposed rules until **4:30 p.m. on Wednesday, November 26, 2025.**

Hearing. If 25 or more persons submit a written request for a hearing on the rules by **4:30 p.m. on Wednesday, November 26, 2025**, the Department will hold a two-day hybrid public hearing on **Wednesday, January 21, 2025, at 9:30 A.M., and Thursday, January 22, 2025, at 9:30 A.M.** Each day, the hearing will continue until 4:30 PM or until all interested persons have been heard, whichever occurs first. You can participate in the hearing, which will be conducted by an Administrative Law Judge from the Court of Administrative Hearings, virtually via Webex by using this link along with the associated access code and password:

For a **video and audio connection**, join the hearing on **January 21, 2025**, through an internet connection:

- Web link: https://minnesota.webex.com/weblink/register/r45292e04e083bee315d8e4d41fb27c9d
- Meeting Number (access code): 2491 963 2031
- Password: ESST

For **audio-only connection**, join the virtual hearing on **January 21, 2025**, by telephone:

- Call: 1-855-282-6330
- Access Code: 2491 963 2031
- Password: 3778

For a **video and audio connection**, join the hearing on **January 22, 2025**, through an internet connection:

- Web link: https://minnesota.webex.com/weblink/register/r94c2972e904a262419d61003cc876ee8
- Meeting Number (access code): 2489 979 3724
- Password: ESST

For **audio-only connection**, join the virtual hearing on **January 22, 2025**, by telephone:

- Call: 1-855-282-6330
- Access Code: 2489 979 3724
- Password: 3778

Alternatively, you may participate in the hearing **in person** each day at:

Minnesota Department of Labor & Industry
Minnesota Room
443 Lafayette Road North
St. Paul, MN 55155

To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the Department contact person, listed below, or check the Department website at https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200 **after November 26, 2025, and before January 21, 2025**.

Subject of Rules. Effective January 1, 2024, Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448 ("the ESST law"), requires most employers to provide paid leave, called earned sick and safe time ("ESST"), for covered employees to use for specific purposes, including when an employee is sick, to care for a sick family member, or to seek assistance if the covered employee or their family member has experienced domestic abuse, sexual assault, or stalking. The proposed rules are intended to clarify key issues in the ESST law, including employer administration of ESST benefits, determining hours worked that are subject to ESST accrual, an employee's right to use ESST, incentives related to production or attendance goals, reasonable documentation, employee misuse of ESST, and more generous paid leave policies.

Statutory Authority. The statutory authority to adopt these rules is *Minnesota Statutes*, section 177.50, subdivision 6. The Department is authorized to "adopt rules to carry out the purposes" of the ESST law.

Publication of proposed rules. The proposed rules may be viewed at: www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200.

Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may review or obtain copies for the cost of reproduction by contacting the Department contact person. The SONAR may also be viewed at: www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200.

Department Contact Person. The Department contact person is Krystle Conley, Rulemaking Coordinator, at the Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155, phone (651) 284-5315, and email dli.rules@state.mn.us. You may contact the Department contact person with questions about the rules.

Public Comment. You have until **4:30 p.m. on Wednesday, November 26, 2025,** to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the due date. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change you propose. Any comments that you have about the legality of the proposed rules must be made during this comment period. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the Department encourages you to participate. All comments or responses received are public data and will be available for review.

Submit written comments to the Department contact person listed above, via email at dli.rules@state.mn.us, or by U.S. Mail delivered to Krystle Conley, Minnesota Department of Labor and Industry, 443 Lafayette Road N., Saint Paul, Minnesota 55155.

All comments or responses received are public data and will be available for review on the Department of Labor and Industry's website at: https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on Wednesday, November 26, 2025**. You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Any request that does not comply with these requirements is not valid and the Department cannot count it when determining whether it must hold a public hearing.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their

requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the Department must give written notice of this to all persons who requested a hearing, explain the actions the Department took to bring about the withdrawal, and ask for written comments on this action. If the Department is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Cancellation of Hearing. The Department will cancel the hearing scheduled for January 21 and 22, 2025, if the Department does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Department will notify you before the scheduled hearing whether the hearing will be held. You may also call the Department contact person at 651-284-5315 after Wednesday, November 26, 2025, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-284-5315 or going online at www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the dates and at the times and place listed above. The hearing will continue until 4:30 P.M. each day or until all interested persons have been heard, whichever occurs first. Administrative Law Judge Megan J. McKenzie is assigned to conduct the hearing. Judge McKenzie can be reached by contacting William Moore, Rules Coordinator, Court of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and william.t.moore@state.mn.us.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the comment period, there is a five-working-day rebuttal period when the Department and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

The Court of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the Court of Administrative Hearings Rulemaking eComments website (https://mn.gov/oah/forms-and-filing/ecomments/) no later than 4:30 p.m. on the due date. If using the eComments website is not possible, you may submit post-hearing comments in person

or via United States mail addressed to Judge McKenzie at the address listed above. All comments or responses received are public data and will be available for review on the eComments website.

This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge, through William Moore, the CAH Rules Coordinator listed above.

Modifications. The Department may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the Department will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the Department must publish a copy of the changes in the *State Register*.

Adoption Procedure if No Hearing. If no hearing is required, the Department may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Court of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the court. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the Department to receive notice of future rule proceedings, submit your request to the Department contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the Department adopts the rules, and the rules are filed with the Secretary of State or register with the Department to receive notice of future rule proceedings by requesting this at the hearing or by writing to the Department contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this hearing accessible, please contact the Department contact person at the address or telephone number listed above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

October 10, 2025

Nicole Blissenbach
Commissioner

MINNESOTA STATE REGISTER

MONDAY, OCTOBER 27, 2025
VOLUME 50, NUMBER 17
PAGES 413 - 444

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- **Proposed Rules**
- **Adopted Rules**
- **Exempt Rules**
- **Expedited Rules**
- **Withdrawn Rules**
- **Executive Orders of the Governor**
- **Appointments**
- **Proclamations**
- **Vetoed Rules**
- **Commissioners' Orders**
- **Revenue Notices**
- **Official Notices**
- **State Grants and Loans**
- **Contracts for Professional, Technical and Consulting Services**
- **Non-State Public Bids, Contracts and Grants**

Printing Schedule and Submission Deadlines

Vol. 50 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#18	Monday 3 November	Noon Tuesday 28 October	Noon Thursday 23 October
#19	Monday 10 November	Noon Tuesday 4 November	Noon Thursday 30 October
#20	Monday 17 November	Noon Tuesday 11 November	Noon Thursday 6 November
#21	Monday 24 November	Noon Tuesday 18 November	Noon Thursday 13 November

PUBLISHING NOTICES: We need to receive your submission ELECTRONICALLY in Microsoft WORD format. Submit ONE COPY of your notice via e-mail to: sean.plemmons@state.mn.us. State agency submissions must include a "State Register Printing Order" form, and, with contracts, a "Contract Certification" form. Non-State Agencies should submit ELECTRONICALLY in Microsoft WORD, with a letter on your letterhead stationery requesting publication and date to be published. Costs are $14 per tenth of a page (columns are seven inches wide). One typewritten, double-spaced page = 6/10s of a page in the State Register, or $84. About 1.5 pages typed, double-spaced, on 8-1/2"x11" paper = one typeset page in the State Register. Contact editor with questions (651) 201-3204, or e-mail: sean.plemmons@state.mn.us.

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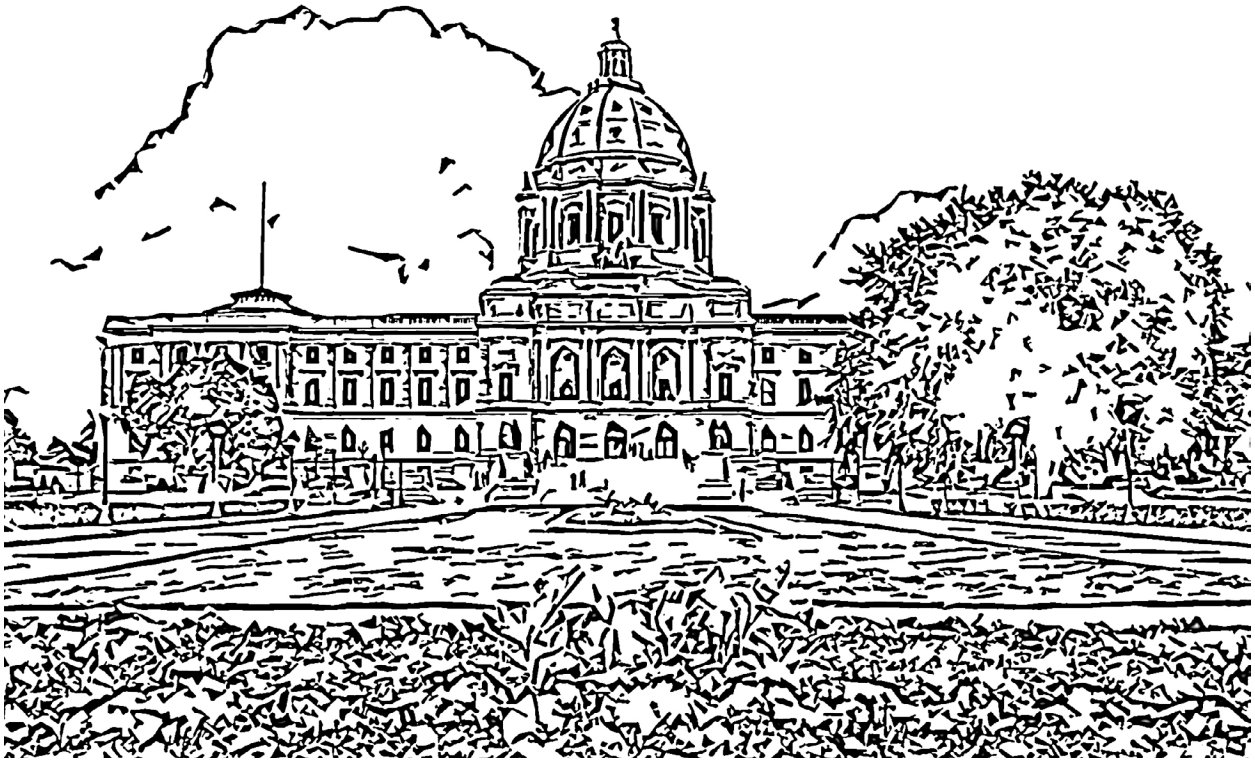
Front Cover Artwork: *The Rouchleau Mine Pit in Virginia, Minnesota, filled with blue water, is calm in the distance on a fall day.*
Photo by Sean Plemmons



Minnesota Rules: Amendments and Additions

NOTICE: How to Follow State Agency Rulemaking in the State Register

The State Register is the official source, and only complete listing, for all state agency rulemaking in its various stages. State agencies are required to publish notice of their rulemaking action in the State Register. Published every Monday, the State Register makes it easy to follow and participate in the important rulemaking process. Approximately 80 state agencies have the authority to issue rules. Each agency is assigned specific Minnesota Rule chapter numbers. Every odd-numbered year the Minnesota Rules are published. Supplements are published to update this set of rules. Generally speaking, proposed and adopted exempt rules do not appear in this set because of their short-term nature, but are published in the State Register.

An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (Minnesota Statutes §§ 14.101). It does this by publishing a notice in the State Register at least 60 days before publication of a notice to adopt or a notice of hearing, or within 60 days of the effective date of any new statutory grant of required rulemaking.

When rules are first drafted, state agencies publish them as Proposed Rules, along with a notice of hearing, or a notice of intent to adopt rules without a hearing in the case of noncontroversial rules. This notice asks for comment on the rules as proposed. Proposed emergency rules, and withdrawn proposed rules, are also published in the State Register. After proposed rules have gone through the comment period, and have been rewritten into their final form, they again appear in the State Register as Adopted Rules. These final adopted rules are not printed in their entirety, but only the changes made since their publication as Proposed Rules. To see the full rule, as adopted and in effect, a person simply needs two issues of the State Register, the issue the rule appeared in as proposed, and later as adopted.

The State Register features partial and cumulative listings of rules in this section on the following schedule: issues #1-26 inclusive (issue #26 cumulative for issues #1-26); issues #27-52 inclusive (issue #52, cumulative for issues #27-52 or #53 in some years). A subject matter index is updated weekly and is available upon request from the editor. For copies or subscriptions to the State Register, contact the editor at 651-201-3204 or email at sean.plemmons@state.mn.us

Volume 50 - Minnesota Rules

(Rules Appearing in Vol. 49 Issues #28-53 are in Vol. 49, #53 - Monday 30 June 2025)

Volume 50, #17

Monday 7 July - Monday 27 October

Proposed Rules

Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.1414.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Department of Labor and Industry

Labor Standards Division

Proposed Permanent Rules Relating to Earned Sick and Safe Time; DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received

Proposed Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

Introduction. The Minnesota Department of Labor and Industry ("the Department") intends to adopt rules without a public hearing following the procedures in the rules of the Court of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments and/or a written request that a hearing be held on the proposed rules until **4:30 p.m. on Wednesday, November 26, 2025.**

Hearing. If 25 or more persons submit a written request for a hearing on the rules by **4:30 p.m. on Wednesday, November 26, 2025**, the Department will hold a two-day hybrid public hearing on **Wednesday, January 21, 2025, at 9:30 A.M., and Thursday, January 22, 2025, at 9:30 A.M.** Each day, the hearing will continue until 4:30 PM or until all interested persons have been heard, whichever occurs first. You can participate in the hearing, which will be

conducted by an Administrative Law Judge from the Court of Administrative Hearings, virtually via Webex by using this link along with the associated access code and password:

For a **video and audio connection**, join the hearing on **January 21, 2025**, through an internet connection:

- Web link: ***https://minnesota.webex.com/weblink/register/r45292e04e083bee315d8e4d41fb27c9d***
- Meeting Number (access code): 2491 963 2031
- Password: ESST

For **audio-only connection**, join the virtual hearing on **January 21, 2025**, by telephone:

- Call: 1-855-282-6330
- Access Code: 2491 963 2031
- Password: 3778

For a **video and audio connection**, join the hearing on **January 22, 2025**, through an internet connection:

- Web link: ***https://minnesota.webex.com/weblink/register/r94c2972e904a262419d61003cc876ee8***
- Meeting Number (access code): 2489 979 3724
- Password: ESST

For **audio-only connection**, join the virtual hearing on **January 22, 2025**, by telephone:

- Call: 1-855-282-6330
- Access Code: 2489 979 3724
- Password: 3778

Alternatively, you may participate in the hearing **in person** each day at:

Minnesota Department of Labor & Industry
Minnesota Room
443 Lafayette Road North
St. Paul, MN 55155

To find out whether the Department will adopt the rules without a hearing or if it will hold the hearing, you should contact the Department contact person, listed below, or check the Department website at ***https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200*** **after November 26, 2025, and before January 21, 2025**.

Subject of Rules. Effective January 1, 2024, Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448 ("the ESST law"), requires most employers to provide paid leave, called earned sick and safe time ("ESST"), for covered employees to use for specific purposes, including when an employee is sick, to care for a sick family member, or to seek assistance if the covered employee or their family member has experienced domestic abuse, sexual assault, or stalking. The proposed rules are intended to clarify key issues in the ESST law, including employer administration of ESST benefits, determining hours worked that are subject to ESST accrual, an employee's right to use ESST, incentives related to production or attendance goals, reasonable documentation, employee misuse of ESST, and more generous paid leave policies.

Statutory Authority. The statutory authority to adopt these rules is *Minnesota Statutes*, section 177.50, subdivision 6. The Department is authorized to "adopt rules to carry out the purposes" of the ESST law.

Publication of proposed rules. The proposed rules may be viewed at: ***www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200***.

Statement of Need and Reasonableness. The statement of need and reasonableness (SONAR) contains a summary of the justification for the proposed rules, a description of who will be affected by the proposed rules, and an estimate of the probable cost of the proposed rules. You may review or obtain copies for the cost of reproduction by contacting the Department contact person. The SONAR may also be viewed at: ***www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200***.

Department Contact Person. The Department contact person is Krystle Conley, Rulemaking Coordinator, at the Department of Labor and Industry, 443 Lafayette Rd. N., St. Paul, MN 55155, phone (651) 284-5315, and email ***dli.rules@state.mn.us***. You may contact the Department contact person with questions about the rules.

Public Comment. You have until **4:30 p.m. on Wednesday, November 26, 2025,** to submit written comment in support of or in opposition to the proposed rules or any part or subpart of the rules.

Your comment must be in writing and received by the due date. Your comments should identify the portion of the proposed rules addressed, the reason for the comment, and any change you propose. Any comments that you have about the legality of the proposed rules must be made during this comment period. All evidence that you present should relate to the proposed rules. If the proposed rules affect you in any way, the Department encourages you to participate. All comments or responses received are public data and will be available for review.

Submit written comments to the Department contact person listed above, via email at ***dli.rules@state.mn.us***, or by U.S. Mail delivered to Krystle Conley, Minnesota Department of Labor and Industry, 443 Lafayette Road N., Saint Paul, Minnesota 55155.

All comments or responses received are public data and will be available for review on the Department of Labor and Industry's website at: ***https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200***.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a public hearing on the rules. You must make your request for a public hearing in writing by **4:30 p.m. on Wednesday, November 26, 2025**. You must include your name and address in your written request for hearing. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules. Any request that does not comply with these requirements is not valid and the Department cannot count it when determining whether it must hold a public hearing.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number of persons withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the Department must give written notice of this to all persons who requested a hearing, explain the actions the Department took to bring about the withdrawal, and ask for written comments on this action. If the Department is required to hold a public hearing, it will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Cancellation of Hearing. The Department will cancel the hearing scheduled for January 21 and 22, 2025, if the Department does not receive requests for a hearing from 25 or more persons. If you requested a public hearing, the Department will notify you before the scheduled hearing whether the hearing will be held. You may also call the Department contact person at 651-284-5315 after Wednesday, November 26, 2025, to find out whether the hearing will be held. On the scheduled day, you may check for whether the hearing will be held by calling 651-284-5315 or going online at ***www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200***.

Notice of Hearing. If 25 or more persons submit valid written requests for a public hearing on the rules, the Department will hold a hearing following the procedures in *Minnesota Statutes*, sections 14.131 to 14.20. The Department will hold the hearing on the dates and at the times and place listed above. The hearing will continue until 4:30 P.M. each day or until all interested persons have been heard, whichever occurs first. Administrative Law Judge Megan J. McKenzie is assigned to conduct the hearing. Judge McKenzie can be reached by contacting William Moore,

Rules Coordinator, Court of Administrative Hearings, 600 North Robert Street, P.O. Box 64620, Saint Paul, Minnesota 55164-0620, telephone 651-361-7893, and ***william.t.moore@state.mn.us***.

Hearing Procedure. If the Department holds a hearing, you and all interested or affected persons, including representatives of associations or other interested groups, will have an opportunity to participate. You may present your views orally at the hearing or in writing at any time before the hearing record closes. All evidence presented should relate to the proposed rules.

You may also submit written material to the Administrative Law Judge to be recorded in the hearing record for five working days after the public hearing ends. At the hearing, the Administrative Law Judge may order this five-day comment period extended for a longer period but for no more than 20 calendar days.

After the comment period, there is a five-working-day rebuttal period when the Department and any interested person may respond in writing to any new information submitted. No one may submit new evidence during the five-day rebuttal period.

The Court of Administrative Hearings must receive all comments and responses submitted to the Administrative Law Judge via the ***Court of Administrative Hearings Rulemaking eComments website (https://mn.gov/oah/forms-and-filing/ecomments/)*** no later than 4:30 p.m. on the due date. If using the eComments website is not possible, you may submit post-hearing comments in person or via United States mail addressed to Judge McKenzie at the address listed above. All comments or responses received are public data and will be available for review on the eComments website.

This rule hearing procedure is governed by *Minnesota Rules*, parts 1400.2000 to 1400.2240, and *Minnesota Statutes*, sections 14.131 to 14.20. You may direct questions about the procedure to the Administrative Law Judge, through William Moore, the CAH Rules Coordinator listed above.

Modifications. The Department may modify the proposed rules either as a result of public comment or as a result of the rule hearing process. It must support modifications by data and views submitted during the public comment and rule hearing process. The adopted rules may not be substantially different than these proposed rules unless the Department follows the procedure under *Minnesota Rules*, part 1400.2110. If the final rules are identical to the rules originally published in the *State Register*, the Department will publish a notice of adoption in the *State Register*. If the final rules are different from the rules originally published in the *State Register*, the Department must publish a copy of the changes in the *State Register*.

Adoption Procedure if No Hearing. If no hearing is required, the Department may adopt the rules after the end of the comment period. The Department will submit the rules and supporting documents to the Court of Administrative Hearings for a legal review. You may ask to be notified of the date the rules are submitted to the court. If you want to receive notice of this, to receive a copy of the adopted rules, or to register with the Department to receive notice of future rule proceedings, submit your request to the Department contact person listed above.

Adoption Procedure after a Hearing. If a hearing is held, after the close of the hearing record, the Administrative Law Judge will issue a report on the proposed rules. You may ask to be notified of the date that the Administrative Law Judge's report will become available and can make this request at the hearing or in writing to the Administrative Law Judge. You may also ask to be notified of the date that the Department adopts the rules, and the rules are filed with the Secretary of State or register with the Department to receive notice of future rule proceedings by requesting this at the hearing or by writing to the Department contact person stated above.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You may direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite #190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone (651) 539-1180 or 1-800-657-3889.

Alternative Format/Accommodation. Upon request, this information can be made available in an alternative format, such as large print, braille, or audio. To make such a request or if you need an accommodation to make this

hearing accessible, please contact the Department contact person at the address or telephone number listed above.

Order. I order that the rulemaking hearing be held at the date, time, and location listed above.

October 10, 2025

Nicole Blissenbach
Commissioner

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

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

B. if the employee will work 50 percent or more of their hours for the employer outside of Minnesota in an accrual year, then only the employee's hours worked in Minnesota count toward their accrual of earned sick and safe time. The employer must determine in good faith before the start of employment and the beginning of the accrual year whether the employee will accrue earned sick and safe time under this item, unless the employer will provide the employee with at least 48 hours of earned sick and safe time during the accrual year;

C. if a significant change in circumstances will occur during an accrual year, such as a change in work location or duties, the employer must determine in good faith whether the employee will accrue earned sick and safe time under item A or B. 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. The employer must give the employee written notice of such a change prior to the date the change takes effect under Minnesota Statutes, section 181.032, paragraph (f). Any accrued but unused earned sick and safe time remains available for the employee to use during the accrual year;

D. for the purposes of this subpart, "good faith" means the employer, at a minimum, evaluated the employee's anticipated work schedule and locations of work in a manner that is not knowingly false or in reckless disregard of the truth. The employer's obligation to provide accrual of earned sick and safe time in accordance with items B and C is met

if the employer acts in good faith when anticipating the employee's location of hours worked for an accrual year;

E. for the purposes of this subpart, an employee who is teleworking is considered to be working in the state where they are physically located while performing telework;

F. notwithstanding this subpart, an employer is permitted to provide earned sick and safe time in excess of the minimum amount required under Minnesota Statutes, section 181.9446; and

G. 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.

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. Changes to accrual under part 5200.1202, subpart 1, item C, are not subject to this subpart.

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:

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 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.

Docket No.– 25-9001-40129

Exhibit G1
Certificates of Mailing and Emailing the Dual Notice

Minnesota Department of Labor and Industry

CERTIFICATE OF MAILING THE DUAL NOTICE: NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED TO THE RULEMAKING MAILING LIST

Possible Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

I certify that on October 24, 2025, at least 33 days before the end of the comment period, at St. Paul, Ramsey County, Minnesota, I mailed the DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received by depositing a copy in the State of Minnesota's central mail system for United States mail with postage prepaid to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a. A copy of the DUAL NOTICE is attached to this Certificate.

Margaret Charpentier

Margaret Charpentier
Legal Services, Minnesota Department of Labor and Industry

Minnesota Department of Labor and Industry

CERTIFICATE OF E-MAILING THE DUAL NOTICE: NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING UNLESS 25 OR MORE PERSONS REQUEST A HEARING, AND NOTICE OF HEARING IF 25 OR MORE REQUESTS FOR HEARING ARE RECEIVED

Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

I certify that on October 27, 2025, at St. Paul, Ramsey County, Minnesota, I sent the DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received as an electronic copy, by email, to the following groups:

1. Individuals subscribed to the Wage & Hour bulletin;
2. Grantee organizations who have worked on Earned Sick and Safe Time ("ESST") outreach in 2023 or 2024;
3. Approximately 380 employer associations, chambers of commerce, and other organizations representing employers in Minnesota
4. Individuals and entities subscribed to the Department of Labor and Industry's webinar announcement lists;
5. Interested state legislators, including bill authors;
6. City-level enforcement offices in Minneapolis, St. Paul, and Bloomington, Minnesota.

The email included a link to the proposed rules on the Department of Labor and Industry's docket page.

Blair Emerson

Blair Emerson
Communications, Minnesota Department of Labor and Industry

Docket No.– 25-9001-40129

Exhibit G2

Certificates of Accuracy of the Mailing and Emailing Lists

Minnesota Department of Labor and Industry

CERTIFICATE OF ACCURACY OF THE MAILING LIST

Possible Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

I certify that the list of persons and associations who have requested that their names be placed on the Department of Labor and Industry rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of October 24, 2025. A copy of the mailing list is attached to this Certificate.

Krystle A. Conley

Krystle Conley
Rulemaking Coordinator, Minnesota Department of Labor and Industry

Minnesota Department of Labor and Industry

CERTIFICATE OF ACCURACY OF E-MAILING LISTS

Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

I certify that the lists of persons and associations itemized below are accurate, complete, and current as of October 27, 2025:

1. Individuals subscribed to the Wage & Hour bulletin;
2. Grantee organizations who have worked on Earned Sick and Safe Time ("ESST") outreach in 2023 or 2024;
3. Approximately 380 employer associations, chambers of commerce, and other organizations representing employers in Minnesota
4. Individuals and entities subscribed to the Department of Labor and Industry's webinar announcement lists;
5. Interested state legislators, including bill authors; and
6. City-level enforcement offices in Minneapolis, St. Paul, and Bloomington, Minnesota.

Blair Emerson

Blair Emerson
Communications, Minnesota Department of Labor and Industry

Docket No.– 25-9001-40129

Exhibit H
Additional Notice Transmittal Email

From: Minnesota Department of Labor and Industry
To: Conley, Krystle (DLI)
Subject: Rulemaking notice: Notice of intent to adopt rules regarding earned sick and safe time
Date: Monday, October 27, 2025 9:50:23 AM

ESST banner

Rulemaking notice: Notice of intent to adopt rules regarding earned sick and safe time

You are receiving this email message because, under the Minnesota Administrative Procedure Act, each Minnesota agency must make reasonable efforts to notify persons or classes of persons who might be affected by the rules being proposed. You are receiving this email message because you have either registered to receive electronic notices related to earned sick and safe

time rulemaking or the Department of Labor and Industry has identified you as a person or organization that might be affected by the proposed rules.

Notice of intent to adopt rules: Proposed rules governing earned sick and safe time, Minnesota Rules, parts 5200.1200 to 5200.1209

The Minnesota Department of Labor and Industry (DLI) intends to adopt rules regarding earned sick and safe time (ESST). DLI intends to adopt these rules without a public hearing unless 25 or more persons request a hearing. The Notice of Intent to Adopt Rules, the proposed rules, and the Statement of Need and Reasonableness explaining why DLI is proposing to adopt these rules are available via the link below. Interested persons or groups may submit comments or information about these possible rules in writing no later than 4:30 p.m. on Nov. 26, 2025. Please see the instructions in the Notice of Intent to Adopt Rules for more information about submitting comments or information.

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 the employee or their family member has experienced domestic abuse, sexual assault or stalking. A copy of the Notice of Intent to Adopt Rules is available in the *State Register* (page 417).

Information concerning this rulemaking proceeding, including a copy of the proposed rules, is available on DLI's rulemaking docket webpage.

---

minnesota department of labor and industry

Minnesota Department of Labor and Industry | www.dli.mn.gov
651-284-5005 or 800-342-5354

Unsubscribe

Docket No.– 25-9001-40129

Exhibit I
Comments received after publication of the Dual Notice

From: Ole Olson
To: RULES, DLI (DLI)
Subject: ESST Thoughts
Date: Tuesday, October 28, 2025 9:54:28 AM

Good Morning.
One question I have is have any of you ever began a business that is required to give a percentage to the state for supposed employee sick and Safe Time! I see this as the beginning of a new tax for this state. I've lived here all my life and remember when Governor Levander began with the penny tax……..This is becoming more of an unfriendly state for businesses to start much less to run. As we are hiring for positions with our business we tell the new employees up front that we cannot afford to pay for sick or vacation time. One of our goals is to get to that point within the first five years. We are making time allowances for them. But when we are dictated to give a percentage up front! Don't give me that it's for the betterment of employees. The state of Minnesota government has a hard enough time balancing its books and now you want to be involved with how many employees throughout the state?! Maybe government people need to come back out in the state and see what it's really like and not what you believe is right.
This is just another kick in the teeth for small business by the state of MN government.

Ole Olson
507-320-2244
Omolson@icloud.com
Sent from my iPad

From: Michelle Grimm
To: RULES, DLI (DLI)
Subject: Public comment - ESST proposed changes
Date: Thursday, November 13, 2025 9:41:32 AM

As an employer committed to compliance with Minnesota's Earned Sick and Safe Time (ESST) law, we support the intent of these proposed rules to prevent misuse while protecting legitimate employee rights. However, we urge the Department to clarify and strengthen language around patterns of suspected misuse to ensure operational fairness and continuity.

Observed Misuse Patterns:

1. **Use of ESST after PTO denial due to staffing limits:**
   Employees frequently request PTO for high-demand dates. When PTO is denied because the maximum number of employees are already scheduled off, some employees subsequently claim ESST for the same date. This undermines scheduling stability and creates inequity among staff who comply with PTO limits.

2. **ESST use immediately before or after holidays:**
   We have observed repeated ESST usage on the day before or after major holidays, which strongly suggests misuse for extended personal time rather than qualifying ESST purposes. This pattern disrupts business operations and increases costs for coverage.

3. **Incremental ESST use of less than 30 minutes at shift start:**
   Employees occasionally use ESST for very short increments (e.g., 15–20 minutes) at the beginning of a shift without a qualifying reason. This practice complicates timekeeping and scheduling and appears inconsistent with the law's intent.

Impact on Business Operations and Workforce Morale

The misuse patterns described have significant consequences for our organization:

1. **Operational Disruption:**
   When employees use ESST after PTO is denied or around holidays, we face unexpected staffing shortages. This directly affects our ability to meet production

deadlines, maintain service levels, and fulfill customer commitments. Unlike planned PTO, these absences cannot be anticipated, creating costly last-minute adjustments.

2. **Impact on Customer Commitments:**
   These disruptions compromise our ability to deliver on commitments to customers in a timely and cost-effective manner. This can lead to missed deadlines, increased overtime costs, and potential damage to client relationships.

3. **Increased Burden on Other Employees:**
   Colleagues often share openly that these absences are not for legitimate sick or safe reasons. This creates resentment among team members who must cover additional workload, work overtime, or sacrifice their own scheduling flexibility. It erodes trust and teamwork.

4. **Negative Impact on Workplace Culture:**
   Employees who observe repeated misuse feel the business is not addressing what they perceive as abuse. This perception undermines morale and confidence in management's fairness, leading to disengagement and higher turnover risk.

Without clear authority to request documentation for these patterns, employers are left unable to address misuse effectively. This not only impacts productivity but also damages employee relations and organizational integrity.

Michelle Grimm, SHRM-SCP | Director of Human Resources
218.386.4056 | marvin.com

From: Steven Peterson
To: RULES, DLI (DLI)
Subject: ESST
Date: Tuesday, November 18, 2025 12:34:25 PM
Attachments: Outlook-mfevfyzo.png
Outlook-h12l5vui.png

To whom it may concern,

I would like to share a concern I have with the ESST rule. I work for a Private Physical Therapy practice, and the practice has an unlimited Flexible time off (FTO/PTO) policy for salaried exempt staff. When ESST was established the practice decided to front load 80 hours for all staff to avoid accrual and the liability of having to pay out the unused hours if an employee leaves. The practice owners were advised by their attorneys to adopt a policy that restricts the use of FTO/PTO for personal injury or illness and to use ESST only. Currently if an employee has used the allocated 80 hours of ESST for say a recovery from a surgery, any additional time for personal injury or illness will be unpaid. Seems ironic that an employee has unlimited time off for anything, but personal injury or illness, because of the ESST rules. Does this promote employees coming to work when sick and potential exposure to others, along with other scenarios that should not need to take place.

If your would like to discuss further, my contact information is listed below.

Thank you for your time.

PT, BA
Physical Therapist
West Saint Paul Clinic Director
P: (651) 275-4706
speterson@osipt.com
www.osipt.com

From: Kristy Larson
To: RULES, DLI (DLI)
Cc: Tiffany Gustin; Gary Lee
Subject: Comment on ESST Proposed Rules
Date: Tuesday, November 18, 2025 1:24:30 PM
Attachments: Outlook-tumk3bcd.jpg
Outlook-z2wtqyeh.png
Comment on Rulemaking 111825.pdf

Hello,

Please find attached MSBA's comments on the proposed rules for ESST.

Thank you!

Kristy Larson, SHRM-CP, PSHRA-CP
Associate Director of Management Services
(507) 934-8146

Strong School Boards … Strong Minnesota

November 18, 2025

Krystle Conley
Office of General Counsel
Minnesota Department of Labor and Industry

Dear Ms. Conley:

The Minnesota School Boards Association (MSBA) strongly supports the adoption of proposed rule 5200.1208 addressing the misuse of Earned Sick and Safe Time (ESST). This rule is essential for maintaining the integrity of ESST benefits while ensuring that Minnesota public schools can effectively manage employee attendance.

Why This Rule Matters for Schools and Students:

- **Promotes Accountability:** By clarifying what constitutes misuse and allowing employers to request reasonable documentation in cases of suspected patterns, the rule provides school districts with practical tools to address inappropriate use of ESST.
- **Reduces Absenteeism:** Employee absenteeism directly impacts school operations and student learning. Limiting misuse helps ensure that staff are present and engaged, contributing to consistent instructional quality and student success.
- **Protects Legitimate Use:** The rule strikes an appropriate balance by preserving employees' rights to use ESST for covered purposes while enabling school districts to take action when misuse occurs.
- **Supports Fairness and Transparency:** Clear definitions and documentation standards help school districts apply policies consistently, reducing disputes and fostering trust between employees and employers.

MSBA Position: We believe this rule will strengthen Minnesota's public education system by reducing disruptions caused by absenteeism and ensuring ESST is used as intended. These measures ultimately support our shared goal: providing students with uninterrupted access to high-quality education.

For these reasons, MSBA urges the Department of Labor and Industry to adopt proposed rule **5200.1208** as written.

Sincerely,
Kristy Larson
Associate Director of Management Services

MINNESOTA SCHOOL BOARDS ASSOCIATION
1900 West Jefferson Avenue, St. Peter, MN 56082-3015 Phone: 507-934-2450 or 800-324-4459
www.mnmsba.org

DLI0107

From: Gary Lee
To: Kristy Larson; RULES, DLI (DLI)
Cc: Tiffany Gustin
Subject: Re: Comment on ESST Proposed Rules
Date: Tuesday, November 18, 2025 1:53:24 PM
Attachments: Outlook-tumk3bcd.jpg
Outlook-z2wtqyeh.png
Outlook-2d5jt1sm

Atta Lars!!!!

Gary Lee
Deputy Executive Director
507.934.8125

From: Kristy Larson
Sent: Tuesday, November 18, 2025 1:24 PM
To: dli.rules@state.mn.us
Cc: Tiffany Gustin ; Gary Lee
Subject: Comment on ESST Proposed Rules

Hello,

Please find attached MSBA's comments on the proposed rules for ESST.

Thank you!

Kristy Larson, SHRM-CP, PSHRA-CP
Associate Director of Management Services
(507) 934-8146

From: Buck McAlpin
To: RULES, DLI (DLI)
Cc: Samantha Hilker
Subject: Proposed Rules Letter from the MN Ambulance Association
Date: Monday, November 24, 2025 2:54:26 PM
Attachments: 2025.11.24_ESST_MAAPublicComment.pdf

Dear Krystle,

Please see attached.

Buck McAlpin
Government Relations.

November 19, 2025

Krystle Conley
Department of Labor and Industry
443 Lafayette Rd. N.
St. Paul, MN 55155
(651) 284-5315
dli.rules@state.mn.us

Re: Comments on Proposed Permanent Rules – Minnesota Rules Chapter 5200.1200 Revisor's ID Number R-04877 (Earned Sick and Safe Time)

To Whom It May Concern:

On behalf of the Minnesota Ambulance Association, we appreciate the opportunity to comment on the proposed rulemaking related to **Earned Sick and Safe Time (ESST).** Our members provide 911 response and emergency medical transport across large and small communities. These services depend on a culture of duty, reliability, and teamwork. The current ESST framework, as implemented, is creating operational instability that directly affects our ability to respond when Minnesotans call for help when they need it most.

ESST has introduced a "protected time off" structure that allows employees to unilaterally remove themselves from duty, significantly impacting shift coverage, pending call volume, and the operational needs of an already strained emergency medical services (EMS) system. While the intent of ESST is appropriate, its practical application in EMS has produced a pattern of misuse that undermines the commitment to service that emergency response depends on.

This has resulted in substantial consequences that put response reliability at risk. Call-offs and mid-shift departures have increased, and staffing shortages are amplified. Our members have documented common patterns that illustrate the problem, including:

- **Use of ESST to cover chronic tardiness.** Employees report traffic, vehicle issues, or personal delays and then apply ESST to avoid attendance consequences. In 15-minute increments, an employee could theoretically be tardy more than 300 times a year with full protection, creating constant disruption for teams and shifts already stretched thin.
- **Use of ESST when PTO is denied.** Employees denied scheduled paid time off (PTO) simply call out using ESST instead.
- **Avoiding mandatory overtime via ESST.** When mandated for overtime, due to low staffing, paramedics have stated they will simply use ESST and not report.

• **Refusing 911 calls at shift-end.** There have been instances where, instead of responding to an emergent call at the end of shift, staff invoked ESST to avoid deployment.
• **Broad qualifying reasons and lack of documentation.** The inability to request reasonable verification has led to excessive, unverifiable use.

In EMS, staffing is not a convenience—it is a matter of life and death, and we rely on having personnel ready and available to respond when minutes matter.
To maintain ESST's purpose while allowing EMS and critical hospital services to operate safely and responsibly, we urge the Department to incorporate stronger documentation expectations into the rule:

1. **Allow employers to require reasonable documentation for all ESST uses**, consistent with Minn. Stat. 181.9447, Subd. 3 (excluding details related to domestic abuse, sexual assault, or stalking). Requiring employees to provide simple supporting documentation or attestations would significantly reduce frivolous use. If documentation is not provided, the absence should default to standard attendance policies.

2. **Clarify that ESST protections do not extend to unverified uses of additional PTO** once the ESST minimum has been met, especially since existing PTO can be used for illness or injury.

3. **Allow employers to establish a reasonable timeframe and method for submitting ESST documentation or attestations.** For example, submitting a brief ESST request or qualifying-purpose statement through a platform like Guardian Tracking. If documentation is not submitted within the employer's reasonable timeframe, the absence should not qualify for ESST protections.

4. **Acknowledge that verifying ESST use is the only practical way to identify and address misuse.** The legislature has stated that misuse depends on reasonable documentation. Without documentation requirements, employers cannot meet the standard for identifying misuse, building a paper trail, or taking corrective action.

5. **Exempting ambulance service personnel,** as defined in Minnesota State Statute section 144E.001, subdivision 3a, from the definition of an employee.

These clarifications would not restrict legitimate use of ESST. Instead, they would restore balance, ensuring employees can access necessary sick and safe time while protecting the public's expectation of reliable emergency response. We urge the Department to revise the proposed rules to include clear, enforceable documentation provisions so that EMS agencies can uphold both employee rights and public safety.

Thank you for your consideration.

Sincerely,

Michael Juntunen, President
Minnesota Ambulance Association

From: Kaitlyn Schammel
To: RULES, DLI (DLI)
Cc: Lida M. Bannink; Christina Benson; Leslie Mills; Sara Romanoski
Subject: Earned sick and safe time, Minnesota Rules, part 5200.1200 - Request for hearing
Date: Tuesday, November 25, 2025 12:50:32 PM
Attachments: image001.png
image002.png
image003.png
image004.png

Hello Krystle,

I am submitting a request for hearing on the proposed Earned sick and safe time, Minnesota Rules, part 5200.1200. Myself, Lida Bannink, and Christina Benson, are employment attorneys at Eckberg Lammers that represent employers. We continue to have concerns about the proposed Earned sick and safe time, Minnesota Rules, part 5200.1200 and the applicability to our clients.

Thank you for your consideration,

Kaitlyn Schammel
Attorney
SHRM-CP and PHR
Eckberg Lammers, P.C.
1809 Northwestern Avenue | Stillwater, MN 55082
Direct: 763-296-0351 | Fax: 651-439-2923
eckberglammers.com
Book Time to Meet with Kaitlyn

From: Ashley Wendlandt
To: RULES, DLI (DLI)
Subject: ESST Rules - Hearing Request
Date: Tuesday, November 25, 2025 3:02:42 PM
Attachments: ESST Rules - Hearing Request Letter.pdf

Thanks,
Ashley Wendlandt

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Email: dli.rules@state.mn.us

Re: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley,

I would respectfully request a public hearing by an Administrative Law Judge from the Court of Administrative Hearings on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who works in an industry that will be significantly impacted by this proposed rulemaking, and after having reviewed the final proposed rule, R-04877, along with the Statement of Need and Reasonableness, I would like to request a public hearing in order to consider further public testimony on the rule. Specifically, I have objections to 5200.1202, Subpart 1: Location of Hours Worked.

Sincerely,

Ashley Wendlandt

Ashley Wendlandt
21091 County Road 130
Paynesville, MN 56362

From: Joel Hanson
To: RULES, DLI (DLI)
Subject: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date: Tuesday, November 25, 2025 2:15:04 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image006.png
image007.png
image008.png
image009.png
image010.png
image011.png

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

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Sincerely,

Joel Hanson

10193 Crosstown Circle
Eden Prairie, MN 55344

Joel Hanson
Director of Government & Public Affairs, ABC MN/ND

joel.hanson@mnabc.com 952-941-8693

www.mnabc.com

10193 Crosstown Circle | Eden Prairie, MN 55344

From: Leslie Jones-Vogel
To: RULES, DLI (DLI)
Subject: Re: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date: Tuesday, November 25, 2025 2:19:41 PM

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Re: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

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As a Minnesotan who works in an industry that will be significantly impacted by this proposed rulemaking, and after having reviewed the final proposed rule, R-04877, along with the Statement of Need and Reasonableness, I would like to request a public hearing in order to consider further public testimony on the rule. Specifically, I have objections to 5200.1202, Subpart 1: Location of Hours Worked.

Sincerely,

--
Leslie Jones-Vogel
Les Jones Roofing, Inc.
941 W. 80th Street
Bloomington, MN 55420
Direct: (952) 767-2826
Office: (952) 881-2241
Fax: (952) 881-7009
leslie@lesjonesroofing.com
www.lesjonesroofing.com

From: Adam Hanson
To: RULES, DLI (DLI)
Subject: Re: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date: Tuesday, November 25, 2025 2:20:35 PM
Attachments: img-1419413d-92ec-452f-8bb3-4ef83300c681
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img-4d37687b-54fb-4d89-bc83-f0f163465e33
img-5866e670-5945-43fa-9880-a30420c60679
img-b73eeaea-93f7-4a83-807a-33f572584b37
img-3d23ea27-67e0-4a47-a13f-3b1eb3e42aa8
img-635ee1ca-edb7-4b12-8a61-6f7314d49196
img-91b6c402-2a96-4edb-a1e1-81add4a534f8
img-7d817a24-f290-4340-8bbd-53ed85907475
img-045dd168-e01b-49d2-83b0-e10353f2cb72
img-25755415-cbd1-4e86-84cb-e8551e634d68

Dear Ms. Conley,

I would respectfully request a public hearing by an Administrative Law Judge from the Court of Administrative Hearings on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who works in an industry that will be significantly impacted by this proposed rulemaking, and after having reviewed the final proposed rule, R-04877, along with the Statement of Need and Reasonableness, I would like to request a public hearing in order to consider further public testimony on the rule. Specifically, I have objections to 5200.1202, Subpart 1: Location of Hours Worked.

Sincerely,

Adam Hanson
Chapter President, ABC MN/ND

adam.hanson@mnabc.com 952-941-8693
www.mnabc.com 651-260-6266
10193 Crosstown Circle | Eden Prairie, MN 55344

From: Jeni Ankeny
To: RULES, DLI (DLI)
Subject: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-0487
Date: Tuesday, November 25, 2025 2:23:55 PM

Dear Ms. Conley,

I would respectfully request a public hearing by an Administrative Law Judge from the Court of Administrative Hearings on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who works in an industry that will be significantly impacted by this proposed rulemaking, and after having reviewed the final proposed rule, R-04877, along with the Statement of Need and Reasonableness, I would like to request a public hearing in order to consider further public testimony on the rule. Specifically, I have objections to 5200.1202, Subpart 1: Location of Hours Worked.

Sincerely,

Jeni Ankeny
6602 Southcrest Dr.
Edina, MN 55435

From: Tori Payne
To: RULES, DLI (DLI)
Subject: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date: Tuesday, November 25, 2025 2:31:44 PM
Attachments: image001.png
image002.jpg
image003.jpg
image004.jpg

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Dear Ms. Conley,

I would respectfully request a public hearing by an Administrative Law Judge from the Court of Administrative Hearings on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

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Sincerely,

Tori Payne
Payroll Specialist

TPayne@bciconstruction.us
M: 320.247.8421
7135 5th Ave NE, Sauk Rapids, MN 56379
bciconstruction.us
Build your tomorrow with today's BCI.

From: Kristin Malterer
To: RULES, DLI (DLI)
Subject: ESST Rules-Hearing Request letter
Date: Tuesday, November 25, 2025 3:16:26 PM
Attachments: image001.jpg

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

Re: Request for Public Hearing on Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

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Sincerely,

Kristin Malterer
Controller | Office Manager
125 Kingswood Dr.
Mankato, MN 56001
Office 507.387.7499

From: Michelle Benson
To: RULES, DLI (DLI)
Cc: Becky Wifstrand; Danny Ackert
Subject: ESST Rulemaking Comments
Date: Tuesday, November 25, 2025 5:16:36 PM
Attachments: Outlook-2uplwryw.png
Outlook-azcoclr4.png

Krystle Conley,

Please find ESST Rulemaking comments submitted on behalf of the Minnesota Hospital Association and our members.

11.26.25 MHA Comments on ESST rulemaking.pdf

Thank you,

Michelle Benson
Sr. Policy Director | Minnesota Hospital Association
Capitol Ridge Building, 161 Rondo Ave Ste 915, Saint Paul MN 55103- 3494
763.443.5690 (Mobile and Text) | www.mnhospitals.org

Book time to meet with me

Minnesota Hospital Association

161 Rondo Ave, St. 1010
St. Paul, MN 55103

November 26, 2025

Krystle Conley
Rulemaking Coordinator
Minnesota Department of Labor and Industry
443 Lafayette Rd. N.
St. Paul, MN 55155

RE: Proposed Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley,

On behalf of our member hospitals and health systems, the Minnesota Hospital Association (MHA) appreciates the Department's efforts to clarify the implementation of Earned Sick and Safe Time (ESST) under Minn. Stat. §§ 181.9445 to 181.9448. We recognize the importance of providing protected leave for employees while balancing the operational needs of health care providers, where adequate staffing directly impacts patient care. However, we have several concerns regarding specific provisions in the proposed rules, particularly as they relate to accrual, documentation requirements, and the treatment of generous paid time off (PTO) policies. Below, we outline our comments and recommendations for each relevant subpart.

Comments on Minn. Admin. R. 5200.1202, Subp. 1.A

Under the proposed rules, employees who work more than half their hours in Minnesota accrue ESST for all hours worked, regardless of where those hours are performed. This raises a significant question as to whether Minnesota can regulate work performed outside of Minnesota. Such extraterritorial application could create compliance challenges for multi-state employers, including health care systems with employees who may work across borders. We recommend the Department clarify or limit this provision to hours worked within Minnesota to align with jurisdictional boundaries and avoid potential legal conflicts.

Comments on Minn. Admin. R. 5200.1208, Subp. 2

The proposed rules state that if an employer suspects ESST misuse, they may request documentation and provide four instances of suspected misuse. In general, this is a welcome addition, as it explicitly authorizes employers to request documentation in cases of suspected misuse, which supports fair administration of the benefit.

However, the examples provided are too limited and do not capture the full range of potential misuse patterns common in health care settings. It is not practicable to identify

all possible examples, but misuse noted here give a sense of the challenges employers face:

i. Repeatedly using ESST on holiday or weekend shifts;

ii. Repeatedly using ESST during required overtime or shifts extending beyond the scheduled end time.

To address this, the rules could solve the issue with a slight language modification: "A pattern or clear instance of suspected misuse includes, but is not limited to: . . ." This would provide flexibility for employers to address misuse based on context-specific evidence without being constrained to a narrow list.

Additionally, under the current statute (Minn. Stat. § 181.9447, Subd. 3), employers are allowed to make a reasonable request for documentation of the qualifying purpose, excluding details related to domestic abuse, sexual assault, or stalking. Requiring employees to submit supporting documentation for an approved ESST use would significantly cut down on frivolous applications of the benefit. If documentation is not provided, the absence would not be approved as ESST and could be documented as a traditional absence, subject to time and attendance policies. This approach should apply to any requested use of unplanned paid time off, given that ESST protections extend to all hours in excess of the required ESST amount when PTO is used for personal illness or injury (as clarified in the proposed rules).

While requesting and reviewing documentation for each use may be labor intensive, the legislature, through its rulemaking, has clearly stated that misuse of ESST is dependent on reasonable documentation and evidence to support suspicion. Our interpretation is that the only way to identify and curb misuse is to require reasonable documentation for each use and verify its application to the qualifying purpose, creating a paper trail if suspicion arises and discipline is needed (which may require an updated clause in time and attendance policy language). For health care providers, this could be as simple as employees submitting an ESST request in a tracking system, such as Guardian Tracking, where absences are already recorded, or noting the qualifying purpose on the entered absence. If they choose not to submit the request within a reasonable timeframe, the leave would not be ESST-eligible for that occurrence.

Comments on Minn. Admin. R. 5200.1209

This proposed rule affirms that employees with more generous paid time off may use it all for sick and safe time purposes. This remains a problematic portion of the ESST statute, and we urge the Department to continue pushing for clarification or revision in

this area. As drafted, Subpart 1 appears to allow all employer-provided paid time off (PTO) to be treated as ESST when used for a qualifying purpose:

"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." (Proposed Rule 5200.1209, Subp. 1)

Overview of Concerns

The rule as drafted could result in employees having access to significantly more ESST than authorized by statute—potentially up to 280 hours under certain PTO policies, compared to the 80-hour maximum carryover referenced in Minn. Stat. § 181.9446. Such an outcome is inconsistent with the ESST statute, which aims to establish a specific, protected amount of time for sick and safe reasons, particularly for employees without existing paid leave benefits, rather than extending ESST protections to all available paid leave. The unintended consequence could lead employers to cancel voluntary PTO programs altogether. Consistent with state law, we recommend that the Department draft a rule clearly stating that separate leave banks are not consolidated to make all PTO time off ESST.

The ESST rule requiring PTO used for qualifying absences to be treated as ESST-protected time creates significant challenges for organizations. It adds administrative burden and can weaken the effectiveness of attendance policies by limiting how certain attendance issues can be addressed. This change may also lead to more absences, raising concerns for patient safety, impacting the overall employee experience, and causing frustration for leaders and teams unable to address problematic attendance patterns. Health care providers currently track the ESST-eligible portion of PTO through HRIS systems, allowing for fair, consistent, and compliant application.

Administrative Complexity and Employee Impact

Under current practices in health care settings, employees who have exhausted their ESST balance and need time off for an ESST-qualifying reason can use PTO to maintain pay continuity. This approach is straightforward for employees and supports financial stability during absences. It also allows employers to manage attendance consistently because PTO usage does not provide statutory job protection under ESST and may still count toward absenteeism calculations.

If employers with existing, optional PTO programs were to limit access to PTO in these situations, it would create unnecessary complexity and negatively impact employees.

Without the ability to use PTO, employees could face unpaid time off for qualifying absences, leading to financial difficulty.

Extending ESST protections to every hour of paid time off also introduces significant administrative challenges. Organizations that offer PTO banks would need to implement or update compliance systems, revise policies, and monitor usage to ensure adherence to ESST standards across expanded leave categories. These changes require additional resources and could complicate workforce planning.

The Rule Usurps Collective Bargaining

As drafted, the rule replaces unions and the collective bargaining process, likely in violation of state and federal labor laws. Collective bargaining agreements often define time off structures, accrual rates, and usage rules separately from statutory sick time. If ESST protections apply by operation of an administrative rule to all paid time off, the effect is employees self-scheduling, a consequence that will certainly adversely impact patient care. The legislature has not authorized the Department to step into the shoes of state-agency recognized labor unions.

Risk of Reducing Benefits and Staffing

Allowing all PTO to be used for ESST-qualifying reasons could unintentionally incentivize employers to reduce overall PTO caps or eliminate other benefits, such as short-term disability, to limit exposure. This shift would undermine the law's intent—within reason—to enhance employee protections and could create ripple effects when Minnesota Paid Family and Medical Leave (MPFML) takes effect in 2026, as employers reevaluate leave programs holistically.

This approach also has direct implications for patient care and staffing. In health care and similar industries, PTO banks combined with expanded ESST protections could lead to more frequent and prolonged absences, making it harder to maintain adequate staffing levels. This can result in increased overtime costs, decreased wellness among overworked staff who do report to work, scheduling disruptions, and potential impacts on patient safety and service quality. Compliance with state and federal health care regulations can be adversely impacted.

Recommendation

MHA, on behalf of our members, urge the Department to clarify that while employers may permit employees to use PTO for ESST purposes, the statutory protections—such as anti-retaliation provisions and documentation requirements—should apply only up to the required ESST amount (48–80 hours), not to all available PTO. This approach aligns with Minn. Stat. §§ 181.9445–181.9448 and preserves the law's intent to provide a defined, reasonable amount of protected leave for sick and safe reasons. Moreover, a

rule written consistent with the statute avoids incentivizing employers to discontinue their voluntary PTO programs.

Thank you for considering these comments. MHA and its members are committed to supporting employee well-being while ensuring sustainable operations in health care. We are available to discuss these concerns further and provide additional input as needed.

Sincerely,

Michelle Benson
Sr. Director of State Government Relations
Minnesota Hospital Association

Danny Ackert
Director of State Government Relations
Minnesota Hospital Association

From: Boesche, Jonathan
To: RULES, DLI (DLI)
Cc: Ischothorst (mnchamber.com); Loesch, Abby; Angie Whitcomb; "Todd Hill"; Steve Barthel; Bruce Nustad; Will Hagen; Joel Hanson; Jill Sims; Nick.Novak@mwfpa.org; john@smarca.com
Subject: Joint Comments re: Proposed Rules Governing ESST; Revisor"s Number R-04877
Date: Wednesday, November 26, 2025 9:52:29 AM
Attachments: Outlook [redacted].png
11.26.25 - Business Organ[redacted]posed Rules Governing Minnesota ESST.pdf

Please accept the attached written comments regarding the Proposed Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877, including a request that DLI hold a public hearing on proposed rule 5200.1202, Subpart 1. For purposes of this request, please consider each of the undersigned organizations as an individual request.

These comments are submitted jointly by NFIB, the MN Chamber of Commerce, the MN Business Partnership, Hospitality MN, the MN Grocers Association, the MN Retailers Association, the Minnesota Service Station & Convenience Store Association, Associated Builders & Contractors MN/ND, The Minnesota State Council of the Society for Human Resource Management, the Midwest Food Products Association, and the Sheet Metal, Air Conditioning & Roofing Contractors Association. The appropriate contacts at each organization are copied on this email.

Thanks for your consideration.

Sincerely,

Jon Boesche
State Director, Minnesota
O. 651-293-0183
jonathan.boesche@nfib.org

November 26, 2025

Krystle Conley, Rulemaking Coordinator
Department of Labor and Industry
Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155

Re: Comments on Possible Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

On behalf of our organizations, which collectively represent tens of thousands of employers and workplaces across the State of Minnesota, we appreciate the opportunity to provide feedback on the proposed draft rules regarding the Minnesota Earned Sick and Safe Time (ESST) mandate.

Our members span diverse industries and regions, employing hundreds of Minnesotans and contributing significantly to the state's economy. They are committed to fostering strong employer-employee relationships and supporting the well-being of their workforce and communities. We believe that the implementation of ESST must be clear and practical to avoid undue burdens on businesses. Below, we outline our specific concerns and recommendations regarding certain provisions of the proposed rules to improve clarity and feasibility.

5200.1202, Subpart 1: Location of Hours Worked

This proposed rule establishes a 50% threshold for determining whether an employee qualifies for ESST accrual based on the proportion of their work performed in Minnesota. While we appreciate the effort to provide guidance to employers with employees who work primarily outside of Minnesota, we are concerned that this proposed rule is an expansion beyond existing guidance from the Minnesota Department of Labor and Industry (DLI), which, states that "[h]ours worked in

Minnesota will apply to ESST accrual."[1] Additionally, although Section 181.9445, Subd. 5 defines "employee" as one "who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota," Section 181.9446 (governing accrual of earned sick and safe time) does not explicitly allow for hours worked outside of Minnesota to be counted for purposes of ESST accrual. If the Legislature had intended hours worked outside of Minnesota to be counted for the purposes of ESST accrual, there would be explicit authorization for such in Minnesota statute.

Under this proposed rule, employers would have to monitor, not only the location of the hours worked, but also whether employees are meeting specific thresholds (such as more than 50 percent of hours worked in Minnesota) and adjust accrual calculations accordingly. This is particularly challenging for small businesses without sophisticated tracking systems, increasing the risk of errors, disputes, and potential legal liabilities. The proportion of time an employee spends working in Minnesota versus another state can fluctuate significantly from year to year, adding an additional administrative burden to track and recalculate accrual rates based on shifting work patterns. We are also concerned about how this requirement will interact with competing ESST standards in other jurisdictions and the potential for double ESST accrual for the hours worked outside of Minnesota.

If employers are expected to meticulously track hours worked based on location, we believe it is fair that only hours worked within Minnesota be counted toward accrual of ESST hours. We recommend that 5200.1202, Subpart 1, be amended to reflect DLI's existing guidance, and specify that ESST accrual is based on hours worked within Minnesota. This approach provides a straightforward and fair method for employers to calculate ESST accrual, while maintaining consistency with current department guidance. Any ambiguities as it relates to whether hours worked outside of the state count towards ESST accrual should be addressed by the Legislature. **Our organizations are requesting that DLI hold a public hearing on 5200.1202, Subpart 1. For purposes of this request, please consider each of the undersigned organizations as an individual request.**

5200.1202, Subpart 3: Indeterminate Shift

We appreciate the modifications that were made that permit employers to use one of three options when determining the amount of ESST to be deducted for employees working "indeterminate shifts." As noted in previously submitted comments, employers need to have the flexibility to address these situations. The method detailed in the previous draft of the proposed rules was overly prescriptive and would have created a new level of complexity that would be extremely difficult for businesses to implement consistently. Small businesses, particularly, need a straightforward method by which they can deduct ESST hours and ensure compliance with the mandate.

As previously shared, there are many situations in which an employer may enlist the help of a replacement worker for a lesser period than is needed to cover the absent employee's shift. For example, replacement workers may work fewer hours than are in fact needed due to scheduling availability or overtime considerations. Additionally, requiring an employer to meticulously calculate

[1] "Minnesota Earned Sick and Safe Time (ESST) - Frequently Asked Questions." *Minnesota Department of Labor and Industry*, https://dli.mn.gov/sick-leave-FAQs#coverage. Accessed 21 Nov. 2025.

the appropriate ESST deduction through this proposed method would open the door to unnecessary disputes, increasing an employer's exposure to penalties for violations.

It is important to ensure that the process of determining ESST hours deducted for indeterminate shifts is as straightforward as possible, and we think that these modifications provide employers with the more flexibility to make these determinations. We believe that permitting the employer to select one of three options provides a clearer and more predictable approach for calculating ESST usage during indeterminate shifts.

5200.1204: Accrual and Advancing Methods

We appreciate that this proposed rule acknowledges the flexibility needed for employers who choose to frontload ESST hours and permits pro-rated accrual based on an employee's start date. This option is essential for businesses that hire employees at different points during the year, allowing them to manage their workforce more efficiently while maintaining compliance with ESST requirements.

However, while the rule requires employers to add ESST hours if the actual hours worked exceed the good faith projection, there is no corresponding provision that allows an employer to reduce ESST if actual hours worked are less than projected. This results in a situation in which employers are unable to provide a downward correction – even when accrual has significantly exceeded what the employee would have earned. This creates inequity and serves as a strong disincentive to front-loading or advancing under the statute. We recommend that the rule be amended to allow for a mechanism that provides employers with the option to reduce ESST accrual if actual hours worked are less than projected.

5200.1208: Misuse of Earned Sick and Safe Time

We appreciate that this proposed rule enhances employer flexibility by allowing them to request documentation when there is a pattern or clear instance of suspected misuse by the employee. Furthermore, we welcome the clarification that a reasonable request for such documentation in these circumstances is not deemed a retaliatory act, as well as examples of what might constitute a pattern or clear instance of suspected misuse

We are also appreciative of the new language in the revised draft rules that specifies that "misuse of earned sick and safe time is not subject to protections to provide to employees….and may be subject to discipline by the employer" (Lines 7.23-7.25). We believe that this change is a step in the right direction towards addressing concerns with disciplining instances of misuse. However, the language does not clearly allow prior substantiated misuse to factor into evaluating the credibility of future claimed uses of ESST.

We continue to believe, and strongly recommend, that the proposed rules should be amended to explicitly allow employers to consider previous, documented instances of misuse when determining whether new claims display patterns consistent with past misuse. This is particularly important in instances where there is an established, documented pattern of misuse. By prohibiting the denial of ESST use in such instances, the employer must essentially continue to allow the misuse to occur,

which goes against the spirit of practical oversight and good-faith administration that should guide ESST compliance.

5200.1209: More Generous Sick and Safe Time Policies

We remain concerned with the requirement that all additional paid time off provided by an employer "must meet or exceed the minimum standards and requirements provided" under the ESST statute, and we continue to maintain that any additional paid time off provided by an employer should be exempt from the standards of Minnesota Statutes §§ 181.9445 to 181.9445.

However, we appreciate the attempt to specify that these minimum standards and requirements only apply when such excess paid time off is used for a "qualifying purpose." We also appreciate that the revised rules draft specifies that leave taken under the Minnesota Paid Family and Medical Leave mandate will be treated as "other salary continuation benefits" and will not be subject to the minimum standards and requirements.

Thank you for the opportunity to provide feedback on the proposed ESST rules. We hope the Department will consider our recommendations to simplify compliance obligations and provide balance with the operational realities of employers across Minnesota.

Minnesota Chamber of Commerce
380 Saint Peter St., Suite 1050
St. Paul, MN 55102

National Federation of Independent Business
380 St Peter St., Suite 750
St Paul, MN 55101

Minnesota Business Partnership
80 S 8th St., Suite #4150
Minneapolis, MN 55402

Hospitality Minnesota
121 S 8th St Suite 970
Minneapolis, MN 55402

Minnesota Grocers Association
1360 Energy Park Dr #300
St Paul, MN 55108

Minnesota Retailers Association
4440 Round Lake Road West, Suite N7
St. Paul, MN 55112

Minnesota Service Station & Convenience Store Association
2886 Middle Street
Little Canada, MN 55117

Associated Builders & Contractors Minnesota/North Dakota
10193 Crosstown Circle
Eden Prairie, MN 55344

The Minnesota State Council of the Society for Human Resource Management
5 North 3rd Avenue West Suite 201
Duluth, MN 55802

Midwest Food Products Association
4600 American Parkway, Suite 210
Madison, WI 53718

Sheet Metal, Air Conditioning & Roofing Contractors Association
6200 Shingle Creek Pkwy. Suite 130
Brooklyn Center, MN 55430

From: Jen Wothe (MSA)
To: RULES, DLI (DLI)
Subject: ESST Request Hearing
Date: Wednesday, November 26, 2025 10:03:42 AM
Attachments: image001.jpg
image002.png
image003.png
image004.png
ESST Request Hearing.pdf

Attached is a letter from the Minnesota Subcontractors Association requesting a hearing on the proposed ESST rules.

Respectfully,

Jen Wothe
Jen Wothe |Executive Director
4248 Park Glen Road, Minneapolis, MN 55416
(952) 928-4689 | www.msamn.com

MSA
Minnesota Subcontractors Association

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

11.26.25

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you,

Sincerely,

Minnesota Subcontractors Association
Jennifer Wothe, Executive Director
4248 Park Glen Road
Minneapolis, MN 55416

From: Boaz Erickson
To: RULES, DLI (DLI)
Subject: Request for hearing
Date: Wednesday, November 26, 2025 10:17:29 AM
Attachments: image001.png
image002.jpg
ESST Request Hearing 11-26-25.docx

See attached ESST hearing request...

Thank you,

Boaz Erickson – General Manager / Estimator / Project Manager

16138 149th Street, SE.
Big Lake, MN. 55309
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www.preferredconcreteconstruction.com

בס"ד

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Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

11.26.25

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Sincerely,
Boaz Erickson
Boaz Erickson – General Manager / Project Manager / Estimator
Preferred Concrete Construction, Inc.
E-mail:* *boaz@preferredconcreteconstruction.com

From: Heather Hoffman
To: RULES, DLI (DLI)
Subject: ESST Rules - Hearing Request Letter. 11.26.25 Heather Hoffman.pdf
Date: Wednesday, November 26, 2025 10:48:48 AM
Attachments: image001.png
ESST Rules - Hearing Request Letter. 11.26.25 Heather Hoffman.pdf

To whom it may concern,
Please see attached hearing request on ESST.
Best regards,
Heather Hoffman
3026 161st Avenue NW
Andover, MN 55304
612-991-5958

Heather Hoffman
President/Project Management
Cell 612-991-5958
Office 763-862-6020
E-Mail heather@commercialdrywall.net

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

11.26.25

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you,

Sincerely,
Heather Hoffman
3026 161st Avenue NW
Andover, MN 55304
heather@commercialdrywall.net

From: Martha Henrickson
To: RULES, DLI (DLI)
Subject: Hearing Request - ESST
Date: Wednesday, November 26, 2025 11:14:01 AM
Attachments: ESST Rules - Hearing Request Letter. 11.26.25.pdf

Please see the attached letter requesting a hearing on the proposed ESST rules.

Martha Henrickson
Mobile: (612) 747-5544 | Office: (651) 686-2835

Management Guidance LLP
1305 Corporate Center Drive, Suite 320
Eagan, MN 55121
http://www.mguidance.com

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November 26, 2025

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Email: dli.rules@state.mn.us

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley:

On behalf of the Minnesota Thermal Insulation Contractors Association (TICA), I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing Earned Sick and Safe Time (ESST).

I represent business owners who will be directly affected by these rules, and I believe a hearing is warranted to fully evaluate the rules' potential impacts. In particular, these businesses have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked). On their behalf, I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you,

Sincerely,

Martha Henrickson
Executive Director, TICA

From: Blake R. Nelson
To: RULES, DLI (DLI)
Subject: Request for Public Hearing
Date: Wednesday, November 26, 2025 11:26:54 AM
Attachments: ESST Rules - Hearing Request Letter (11-26-25) (brn) (4899-2601-4332) (v1).pdf

Please see the attached.

Regards,

BLAKE R. NELSON
Attorney at Law
Direct: 952-746-2131
hjlawfirm.com

HELLMUTH & JOHNSON

WRITER'S DIRECT DIAL NO.: (952) 746-2131
E-MAIL:BNELSON@HJLAWFIRM.COM

MSBA BOARD CERTIFIED SPECIALIST,
REAL PROPERTY LAW

November 26, 2025

VIA EMAIL

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules and as the president of the Minnesota Subcontractors Association, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Very truly yours,

HELLMUTH & JOHNSON

Blake R. Nelson
Attorney at Law

BRN/

From: Amy Bratulich
To: RULES, DLI (DLI)
Subject: Request for a Public Hearing-Proposed Permanent Rules Governing ESST
Date: Wednesday, November 26, 2025 11:59:14 AM
Attachments: Outlook-zto10hek.png
Request for Hearing ESST-AmyB.pdf

Good morning,

Please find my request for a public hearing regarding proposed permanent rules governing earned sick and safe time, Minnesota Rules, 5200.1200, Revisors ID number R-04877.

Thank you,
Amy Bratulich
Chief Financial Officer

Nationwide Contractors Since 1923
1175 Eagan Industrial Road
St. Paul, MN 55121
651-452-2700 – Phone
651-994-4154 – Direct Dial
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Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

Email: dli.rules@state.mn.us

November 26, 2025

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you,

Amy Bratulich

Amy Bratulich, CPA
Chief Financial Officer
1175 Eagan Industrial Rd
Eagan, MN 55121

From: Isabel Khalil
To: RULES, DLI (DLI)
Subject: ESST Request for Hearing
Date: Wednesday, November 26, 2025 12:08:48 PM
Attachments: ESST Hearing Request.pdf

Good Afternoon,
Please see attached letter requested ESST hearing.
Thank you,

Isabel Khalil
Office Manager

d. 952.567.7616
e. ikhalil@lloydsmn.com

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Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

November 26th, 2025

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you,

Sincerely,

Isabel Khalil

Isabel Khalil
Office Manager

From: Felipe Illescas
To: RULES, DLI (DLI)
Subject: Requesting hearing on ESST rules
Date: Wednesday, November 26, 2025 2:55:09 PM
Attachments: image001.png
MNLA ESST hearing request.pdf

Good afternoon,

Please see the attached letter requesting a hearing on the proposed ESST rules.

Please feel free to reach out to me with any questions regarding this letter.

Thank you very much.

Felipe
Felipe Illescas
Government Affairs Director
Minnesota Nursery & Landscape Association
Email - felipe@mnla.biz
Cell - 612-418-5382

Minnesota Nursery &
Landscape Association

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Krystle Conley, Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

November 26th, 2025

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a representative of one of Minnesota's largest industries that will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Thank you very much.

Sincerely,

Felipe Illescas
Government Affairs Director
Minnesota Nursery & Landscape Association
612-418-5382
felipe@mnla.biz

From: tamara gtshvac.com
To: RULES, DLI (DLI)
Cc: tamara gtshvac.com
Subject: Request Hearing for ESST
Date: Wednesday, November 26, 2025 2:30:00 PM
Attachments: image001.png
image002.png
image003.png
ESST Hearing Request Letter 11.26.2025.pdf

See attached.

Tamara Sundby, CEO
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GTS HVAC, Inc.

"Building Systems That Perform"

4018 Joyce Lane • Minneapolis, MN 55429

Krystle Conley
Rulemaking Coordinator
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
Email: dli.rules@state.mn.us

11.26.25

Re: Request for a Public Hearing - Proposed Permanent Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Krystle Conley,

I respectfully request a public hearing on the proposed permanent Minnesota Rules, parts 5200.1200 to 5200.1209, governing earned sick and safe time (ESST).

As a Minnesotan who will be directly affected by these rules, I believe a hearing is warranted to fully evaluate their potential impacts. In particular, I have concerns regarding the calculation requirements set forth in part 5200.1202, subpart 1 (Location of Hours Worked), and I request an opportunity for those concerns to be addressed through the public hearing process.

Tamara R Sundby, CEO

Tamara R Sundby

GTS HVAC, Inc.

From: Chilco, Sebastian
To: RULES, DLI (DLI)
Cc: Robbins, Holly; Mills-Gallan, Stephanie
Subject: Submission of Public Comment re: Revised Proposed Permanent Rules Relating to Earned Sick and Safe Time
Date: Wednesday, November 26, 2025 3:25:08 PM

Dear Minnesota Department of Labor and Industry:

We are attorneys at Littler Mendelson, and members of the firm's Paid Leave Subgroup, a group of attorneys from across the country that focuses on advising employers of all sizes on federal, state, and local paid leave requirements, such as Minnesota's Earned Sick and Safe Time (ESST) law. When the subgroup was formed, there were a handful of laws, mostly at the local level. Since then, the number of paid leave laws has increased exponentially. Accordingly, attorneys like us bring to the table a wealth of legal, and historical, knowledge and perspective when it comes to job-protected paid leave.

After reviewing the revised Proposed Permanent Rules Relating to Earned Sick and Safe Time, we have prepared the below comments.

Additionally, we request that the Department hold a public hearing concerning the proposed rulemaking before it adopts rules.

Thank you for considering the following.

Holly Robbins	Stephanie Mills-Gallan	Sebastian Chilco
Shareholder	Shareholder	Attorney at Law
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Labor & Employment Law Solutions	Littler.com Labor & Employment Law Solutions	Littler.com Labor & Employment Law Solutions

Request for Public Hearing

We formally request that the Department hold a public hearing concerning the proposed rulemaking re: 5200.1202, 5200.1205, and/or 5200.1209 before it adopts rules.

Comments on Proposed Rulemaking

5200.1202 (Hours Worked)

Proposed subpart 1(B) requires that employees who work outside of Minnesota for 50 percent or more of the time accrue sick and safe time for hours worked in Minnesota.

The Department should exclude from this rule any employee who is subject to a mandatory paid leave law outside of Minnesota and is already accruing leave hours under the other law for hours worked in Minnesota.

The Department should also limit use of any statutory Minnesota sick and safe time accrued pursuant to this proposed rule to hours the employee is scheduled to work in Minnesota.

5200.1205 (Employee Use)

Proposed subpart 1 prohibits employers from requiring an employee to use sick and safe time for a qualifying purpose.

In its Statement of Need and Reasonableness, the Department focuses on how the statue uses "may" and that term's permissive nature. However, another reasonable interpretation is that a qualifying purpose is a condition – among many – that an employee may need to satisfy to have the law's protections apply to an absence. Other conditions may include, for example, adequate notice of intent to use leave, having hours of leave available to use, not having exceeded the use cap based on prior absences, and, when permitted, providing documentation to support the absence. An employee being absent for a qualifying purpose, by itself, may be insufficient, but an employee may be able to use sick and safe time for a qualifying purpose <u>if</u> they satisfy <u>all</u> necessary pre- <u>and</u> post-requisites. The Department acknowledges this in its Statement of Need and Reasonableness concerning a separate proposal: "employees must comply with reasonable documentation requirements to receive the full protections of the ESST law."

As explained more fully in our original comments (*see below*, Appendix), an employer defaulting to paying and protecting an employee will minimize more disputes surrounding an absence than only doing so if an employee utters the "magic" words "I am requesting to use [X] hours of sick and safe time for this absence."

5200.1209 (More Generous Sick and Safe Time Policies)

Proposed subpart 1 subjects certain paid leave benefits an employer voluntarily provides that *exceed* the law's *minimum* standards to statutory sick and safe time standards and requirements.

The proposed interpretation of Minn. Stat. § 181.9448(1)(a) is inequitable, in tension with limitations the law allows, and inevitably will financially injure employees because some companies will reduce the amount of paid leave employees receive.

- <u>Inequitable</u>: The proposal treats *generous* employers *less* favorably than employers who provide the *minimum*
- <u>In Tension</u>: Under the law, employers who frontload can effectively limit annual use to 48 or 80 hours, depending on their method of compliance. Similarly, an employer who allows employees to accrue leave can limit leave use to 48 hours during an employee's first year, and during an employee's second or subsequent

year of employment the (hypothetically) maximum amount of leave an employee could use is 96 hours if they carried over 48 hours from the previous year, used that amount in the subsequent year, and accrued and used an additional 48 hours in the subsequent year.

- Inevitable Injury: Rather than be held to a *higher* standard than employers providing a *lower* amount of leave, some companies will prospectively reduce paid leave they offer, possibly to the bare minimum the law requires. The knock-on effect would be either employees taking more time off *unpaid* or employees *not* taking time off because they *won't* get paid.

Minn. Stat. § 181.9448(1)(a) says it does not "discourage employers from adopting or retaining earned sick and safe time policies that [] exceed [] the [law's] minimum standards and requirements," but the Department's proposal will have that effect.

As explained more fully in our original comments (*see below*, Appendix), a fairer and more reasonable interpretation that aligns with the entire law is that sick and safe time standards and requirements apply only when employee use the portion of a more generous paid leave benefit that the law and an employer's policy entitles them to use for statutory leave purposes and, once they exhaust their statutory entitlement, any further use of such leave is outside the scope of the law and governed exclusively by employer policy.

Appendix: Original Comments Referenced

5200.1205 EMPLOYEE USE – Subpart 1

Subpart 1 of the proposal provides that "An employer must not require an employee to use earned sick and safe time."

The law says employees *can* use leave for covered reasons, but it would be more beneficial and straightforward to employers *and employees* if the Department interpreted the law to mean that employees *must* use leave when they are absent from work for a covered reason.

Other jurisdictions have taken varied approaches to this issue. Some jurisdictions indicate the choice about whether to use leave belongs to the employee. Others allow employers to designate absences for covered reasons as job-protected paid leave.

Based on our experience with employers of all sizes from around the country, we share concerns expressed by Oregon's Bureau of Labor & Industries in its FAQ on this issue and want to minimize disputes between employers and employees, particularly when they can be avoided:

> We provide our employees with 40 hours of PTO each year that may be used for vacation or sick leave. My employee does not want to be paid when he is out sick because he wants to save the time for vacation. Do I have to require the employee to take the day as paid sick time?
>
> Best practice would be to require the employee to take the day as paid sick time.

To do otherwise could lead to problems down the road. But, the law does not mandate that you require employees to take paid sick time. Best practice would be to have the unpaid vacation day discussion once all the employee's sick time has been used, since vacation time is not protected, instead of risking liability for unpaid sick time an employee is otherwise entitled to use.

Numerous legitimate reasons support allowing employers to designate covered absences as ESST covered by the law:

- Public Policy: The goal of job-protected paid leave laws is to eliminate the Catch-22 employees face of having to choose between financial and personal / familial wellbeing. Providing pay and job protections further this goal.
- Legal: Minimize disputes that a company *should have known* the employee wanted to use leave and/or actions taken because job-protected paid leave was *not* applied to the absence.
- Administrative / Practical: Standardize and establish boundaries for the process, which might lessen disruptions to payroll and leaves management administration. If employers spend less time looking backwards they will have more time to look forward.
- Certainty: Minimize the chance that an employee asks to designate prior absences retroactively as paid sick leave after receiving discipline under an attendance policy.
- Employee Relations: Give employees the benefit of the doubt, not only in terms of legal protections but also concerning payment (one might say a double win for employees).

We understand that the Department might be hesitant to encourage the practice due to concerns that its approval might be misinterpreted by *some* employers to allow them to designate *any* absence as paid sick leave, including absences from work that were caused by the *employer*. A solution would be to make clear that designation is allowed only when an *employee* initiates the absence for an ESST reason, like Maine does (12-170-X Me. Code R. § V(E); Maine Department of Labor, Frequently Asked Questions and Answers on Earned Paid Leave (LD 369)).

We would be happy to work with the Department on how, practically speaking, such a process might work.

5200.1207 MORE GENEROUS SICK AND SAFE TIME POLICIES

Amendments to Minn. Stat. § 181.9448(1) effective January 1, 2025, along with statements that the Department has made online and during presentations, and now in the Department's proposal, have caused confusion and concern with employers offering "more generous" paid leave benefits. This confusion is likely to lead to retrenchment of more generous programs and changes that are unpopular with employees.

Minnesota's ESST law, like other similar laws across the country, establishes

"minimum" standards. Minn. Stat. § 181.9448(1)(e). Examples of these "minimum" standards include, but are not limited to, the amount of statutory ESST employees can accumulate in a year or overall. Moreover, although the law is silent on the amount of leave an employee can use in a year, a policy following the law's "minimum" standards would produce *de facto* use caps.

In establishing a "minimum" standard, the law acknowledged that some companies were providing sub-minimum paid leave benefits, or no benefits whatsoever, without a legal mandate. However, some companies were providing benefits that met or exceeded what the law now requires and *voluntarily* provided benefits to their employees. To avoid disadvantaging more generous companies, the law expressly provides that it does not require them to provide employees ESST in addition to the law's "minimum" amount so long as these benefits meet the law's other "minimum" standards. Minn. Stat. § 181.9448(1)(a).

If an employer's policy or practice falls below a "minimum" standard, a violation can occur. However, if the policy or practice meets *or exceeds* the "minimum" standard, there can be no violation. Moreover, the law encourages employers to adopt or retain policies that exceed its "minimum" standards. Minn. Stat. § 181.9448(1)(a).

<u>Paid Leave Bank Setups Potentially Impacted by Amendments</u>

The new statutory language discusses paid leave *in excess of* the law's *minimum* requirements.

As the new language acknowledges, some employers might voluntarily offer employees a suite of paid leave benefits. The new language expressly excludes certain benefits: short-term or long-term disability or other salary continuation benefits. However, there are significant concerns about how the law applies to other paid leave benefits an employer provides *voluntarily* that are *not* being used to comply with Minnesota's ESST Law.

Some employers offer only one type of paid time off benefit. For example, an employer might only provide paid sick (and/or safe) time to employees, or might only offer combined paid time off (PTO) that an employee may use for *any* reason, such as illness, safe time, vacation, a child's school event during work hours, personal appointments, etc. Given they offer only one type of paid leave benefit, most likely they would use, or revise, that policy to meet their statutory paid sick and safe time obligations.

Other employers offer employees separate banks of vacation and sick leave. To provide even more flexibility to their employees, some companies offer both a bank of PTO and a separate bank of sick leave. In both these examples, the company will use the sick leave bank to comply with any statutory paid sick and safe leave obligations. Moreover, in certain instances the sick leave bank will track requirements under an applicable paid sick and safe leave law, whereas company policy will govern how the other vacation or PTO bank operates.

Some generous companies also offer other types of short- or longer-term paid leave to employees, independent of any legal obligation and in addition to their statutory paid leave requirement. Leave under some of these policies might be available for personal injury or illness reasons. For example, a company might offer paid pregnancy disability leave independent of its short-term disability policy. A company also might offer a bank of paid leave that employees can use only when unexpected events arise. For example, in recent times many companies voluntarily offered COVID paid sick leave. Many companies also voluntarily offer paid family-medical leave policies that provide for weeks of paid leave, for example, to care for a family member with a serious health condition or to bond with and care for a new child (soon, in Minnesota, this type of leave will be required).

For companies that offer a bank of paid sick and safe leave that meets the statutory "minimum" requirements of Minnesota's ESST Law plus one or more banks of other types of paid leave, the Department should not impose Minnesota ESST requirements on the voluntary paid leave programs when employees use the non-ESST bank for "personal illness or injury" purposes. Doing so would only discourage employers from offering more generous benefits.

Generous Single Bank of Paid Leave Used to Comply with Minnesota ESST Law

Under Minnesota's ESST law, if an employer uses an accrual-based system, the maximum amount of leave an employee can accrue in a year is 48 hours, and the maximum amount of leave an employee can accrue and use across two consecutive years is 96 hours (assuming the employee uses at least 16 hours of leave during this period). If an employer frontloads ESST, the maximum amount of leave an employee can use in a year is 48 or 80 hours, depending on its frontloading compliance approach.

Some employers offer only one type of paid leave benefit and use that benefit to meet their statutory obligations under Minnesota's ESST law. These policies – often developed before a legal requirement existed – provide more leave than the "minimum" amount established under Minnesota's ESST Law. Because these policies were typically in place *before* a legal mandate existed, leave administration might vary from Minnesota's ESST Law. However, to comply with the Minnesota ESST Law's "minimum" standards, the policies generally expressly provide that they follow the Minnesota ESST Law for any qualifying absences thereunder.

We note that companies report that these policies are popular with employees, both because they generally provide more generous time off and because they provide the employee with more flexibility in planning their own time off.

Now, although a company might provide only a single type of paid leave benefit – *e.g.*, paid sick and safe time or PTO – that does not mean its paid leave benefits are not "generous" (at least compared to the Minnesota ESST Law's "minimum" requirements). Many companies annually provide multiple weeks of paid leave, especially for long-time

employees. Moreover, the amount of paid leave an employee could accumulate at any future point during their employment could be substantial. At some of these companies, paid leave is provided up front when employment begins. Some companies generously choose to allow pay-out of accrued, unused leave at termination even though neither the ESST laws nor the common law requires payout.

The Department should not attempt to impose Minnesota ESST requirements and extend Minnesota ESST protections to employees when they use the "more generous" portion of their paid leave bank for "personal illness or injury" purposes. Such an interpretation would differ from how other enforcement around the country have interpreted their laws. For example:

> Arizona: "When an employer's paid leave policy either meets or exceeds the requirements of the Fair Wages and Healthy Families Act, can the employer carve out a specific bank of time that only applies to earned paid sick time? Yes. The Fair Wages and Healthy Families Act does not prohibit tracking earned paid sick time separately from other forms of leave." Industrial Commission of Arizona, Frequently Asked Questions (FAQS) About Minimum Wage and Earned Paid Sick Time.
>
> Illinois: "Employer D did not provide any paid leave to its employees prior to January 1, 2024. On January 1, 2024, Employer D adopts a paid leave policy that provides all employees 40 hours of paid leave, and the terms of that policy comply with all provisions in the Act. The following year, Employer D decides to offer an additional five days of paid leave to its employees who have been employed by them for five years or more. The employer would like to require advanced written notice in order to take that additional leave. The provisions of this Act do not apply to the additional paid leave time the employer has chosen to provide for longer-tenured employees and the employer can set different terms and conditions for use of this leave." Ill. Admin. Code tit. 56, § 200.200(b).
>
> Maine: "My business currently provides sick and vacation days. If those total 5 days or more, am I in compliance with the law? For an existing policy to be in compliance with the Earned Paid Leave law, the existing policy must allow an employee to use up to 40 hours of paid leave per year for any reason. A leave policy must have the following characteristics to be in compliance: . . . If an employer provides more than 40 hours of leave to full-time employees, only 40 hours of leave needs to meet the characteristics of the Earned Paid Leave law. (Example: The employer may allow 40 hours of leave for any reason but allow additional time that may only be used with advance notice (i.e. vacation time.)" Maine Department of Labor, Frequently Asked Questions and Answers on Earned Paid Leave (LD 369).

Similar interpretations exist at the local level. *See, e.g.,* Allegheny County Pennsylvania

Department of Administrative Services, Guidelines for Administering the Allegheny County Paid Sick Leave Ordinance, § 3(j), Pittsburgh Pennsylvania Mayor's Office of Equal Protection, Guidelines for Administering Pittsburgh City Code Chapter 626, Paid Sick Days Act, Guideline 3(j), and Philadelphia Pennsylvania Regulations § 9 (Benefits provided in excess of what the law requires are not subject to the law's requirements).

To be clear, even if a paid leave policy is more generous than the Minnesota ESST Law, Minnesota ESST requirements and protections would still apply when employees use leave under such a policy for a qualifying reason in accordance with – and subject to the limits of – the Minnesota ESST Law. However, the law should not be interpreted to apply to use of more generous benefits when *outside* the limits of the law.

Consider, for example, a company that annually frontloads 200 hours of PTO (2.5 times the maximum amount of leave an employee could use in a year under the 80-hour frontloading approach under the Minnesota ESST Law). When employees use PTO for Minnesota ESST reasons, the policy expressly says that the ESST law controls issues surrounding notice of the need for leave, documenting leave, etc. (and describes those standards). To satisfy the Minnesota ESST law's recordkeeping obligations, the policy expressly requires employees to record when they use PTO for Minnesota ESST purposes. Moreover, the policy expressly states that an employee can record a maximum of 80 hours of PTO use as Minnesota ESST. However, the policy also expressly says that for uses of PTO for non-Minnesota-ESST purposes, or if an employee has already exhausted 80 hours of PTO in a year for Minnesota ESST purposes, separate provisions in the policy concerning employee notice, documentation, and discipline control (and describe what those standards are).

Assume that an employee starts the year with a personal illness and uses 80 hours of PTO. In the middle of the year the employee takes a one-week vacation and uses 40 hours of PTO for non-ESST purposes. And at the end of the same year the employee is injured and needs again to take two weeks off, using the final 80 hours of PTO available. At the beginning of the year, hypothetically any hour of the 200 hours of PTO may be used in accordance with – and subject to the requirements and protections of – the Minnesota ESST Law. Whether a specific hour qualifies as protected ESST, however, depends on the employee's reasons for using PTO, how much PTO has been used for what reason during the year, and notice, documentation, and recording standards that apply to each absence.

Assuming the employee properly requested, documented, and recorded the first 80 hours of PTO used as Minnesota ESST, those 80 hours would meet the law's minimum requirements and represent use of the maximum number of protected ESST hours the employee could use in a year pursuant to the law's minimum requirements. The 80 hours used at the end of the year, however, are outside the Minnesota ESST Law's scope, standards, and protections.

Were Minnesota ESST standards and protections applied, the more generous company would be held to a higher standard than companies providing the bare minimum amount of leave that the law requires. This could discourage a company from retaining its more generous policy. We cannot express this point strongly enough. Numerous clients have changed their policies or are considering changing their more generous policies out of concern that employees will have, under these generous policies, *hundreds* of hours of protected time off. Some companies are considering replacing PTO policies with separate vacation and sick and safe time policies, which be used only for the intended purposes (in other words, employees could not use vacation time to cover time off for illness or vice versa). Generally, we find that employees prefer the more flexible PTO system, and employers would prefer to retain it. However, when an employer is more generous – providing well more than the requirements of the Minnesota ESST statute – allowing employees to take sometimes *hundreds* of hours of unexpected time off is not feasible.

<u>Personal Illness or Injury if 181.9448 Interpreted Broadly</u>

Assuming the Department intends the interpret and enforce section 181.9448 in a broad manner, such that Minnesota ESST Law standards and protections apply to leave provided in a separate leave bank that is *in addition to* a statutory paid leave bank and/or to the more generous component of a single bank of leave used to meet statutory obligations, the Department should clarify in its regulations that these "heightened" protections and standards apply only if an employee uses such leave for absences connected to "personal injury or illness" – the explicit language of the statute.

We note that the language of the statute is clear. If the legislature intended to include all sick and safe time reasons in this language, it would have done so, but it did not. It carved out "personal injury or illness." The Department's regulations should therefore clarify and provide examples of what does not constitute a personal illness or injury absence. For example:

- Preventive medical or health care (as employee is neither ill nor injured)
- Care of a family member (as the absence would not be personal)
- Business / school or place of care closures due to weather or other public emergency (as employee is neither ill nor injured)
- Bereavement leave (as employee is neither ill nor injured)
- Safe time for issues such as attending court or seeking legal advice (as the employee is neither ill nor injured)

Littler Mendelson, P.C. is part of the international legal practice Littler Global, which operates worldwide through a number of separate legal entities.

From:	smith.mackenzie@dorsey.com
To:	RULES, DLI (DLI)
Cc:	Mick.Ryan@dorsey.com; molly.sigel@faegredrinker.com
Subject:	Comments on proposed rules governing Minnesota Earned Sick and Safe Time
Date:	Wednesday, November 26, 2025 3:52:34 PM
Attachments:	image001.png MELC Comment re Proposed ESST Rules 11.26.25 v.2.pdf

Good afternoon,

Please find attached the Comments on proposed rules governing Minnesota Earned Sick and Safe Time from the Minnesota Employment Law Council.

Thank you,

Kenzie Smith

Legal Assistant to Deborah Autrey, Anabel Cassady, Chelsea McLean, and Ryan Mick

Pronouns: She/Her/Hers

Suite 1500, 50 South Sixth Street | Minneapolis, MN 55402-1498

P: (612) 492-5046

Minnesota
Employment
Law Council

MEMORANDUM

TO:	Krystle Conley, Rulemaking Coordinator (dlirules@state.mn.us) Office of the General Counsel Minnesota Department of Labor & Industry
FROM:	Minnesota Employment Law Council
DATE:	November 26, 2025
RE:	Comments on proposed rules governing Minnesota Earned Sick and Safe Time (proposed Minn. R. 5200.1200 et seq.)

Thank you for the opportunity to comment on the further-revised proposed rules concerning Minnesota's Earned Sick and Safe Time statute (Minn. Stat. §§ 181.9445 – 181.9448). The Minnesota Employment Law Council's ("MELC") members appreciate the effort that has gone into the rulemaking process. MELC offers the following comments for consideration.

Proposed Rule 5200.1202 (Hours Worked)

MELC appreciates the Department's effort to address concerns about accrual for employees who do not work primarily in Minnesota, including the practical "good faith" standard articulated in the proposed rules and the SONAR. Those rules will help make ESST administration more efficient and practical for the benefit of employees and employers alike.

MELC offers two observations regarding the proposed rule for the Department's consideration.

Fundamentally, it would be helpful for employers to further clarify the meaning of "significant change in circumstances" in two respects. Presumably the intent of the rule is to refer to *employer-initiated* changes in circumstances only. If an employee chooses to move or to work more hours in Minnesota (i.e., an employee volunteers for a project involving time spent in Minnesota), an employer may not realize the implications under the ESST statute or be aware of the change so as to provide adequate notice.

Related, the word "significant" is not defined and compliant employers will be uncertain in many instances whether a known change in circumstances is "significant" or "nominal" (as described in the SONAR). Mindful that adjustments can and will be made more easily on an employer's regular annual cycles, the Department might consider a more exclusive list of circumstances that would require a mid-year adjustment, such as "promotion, transfer, reassignment, or change in work location," in order to provide clarity for employers and employees alike and avoid unintended disputes.

Alternatively but similarly, the Department might consider limiting the circumstances requiring a mid-year adjustment to employer-initiated actions affecting employees at a department or other business unit level. For larger employers managing the work of hundreds of employees, making judgments regarding a "significant change in circumstances" for hundreds of individuals, then recalculating leave accruals and issuing notice will be a very substantial undertaking. Again, mindful that adjustments can and will be made more easily on an employer's regular annual cycles, the Department would provide significant administrative relief to large employers by clarifying and limiting the circumstances in which mid-year adjustments to ESST accrual will be required.

MELC also respectfully suggests that the Department should expressly apply the "good faith" standard articulated in Rule 5200.1202 to the employer's judgment regarding the 80-hour threshold set forth in Minn. Stat. § 181.9445, subd. 5. Given the similar nature of the assessment, MELC proposes that a similar standard should apply.

MELC also joins in the request of other employer organizations that DOLI hold a public hearing on Proposed Rule 5200.1202, given the significant legal implications of that rule.

Proposed Rules 5200.1203 (Increments of Accrual) and 5200.1204 (Accrual and Advancing Methods)

MELC continues to support the common-sense provisions set forth in Proposed Rules 5200.1203 and 5200.1204 to simplify and clarify the process of crediting accrued ESST and/or advancing ESST time.

Proposed Rules 5200.1205 (Employee Use) and 5200.1207 (Reasonable Documentation)

MELC approves of the common-sense clarifications regarding employee protections when employees decline to use available ESST or fail to provide reasonable documentation as lawfully requested by an employer. With respect to Proposed Rule 5200.1207, the Department would provide further important clarity if it offered a baseline understanding of the phrase "a reasonable amount of time to provide reasonable documentation," recognizing that phrase is likely intended to be flexible and account for individual circumstances.

Proposed Rule 5200.1206 (Incentives)

MELC also appreciates the Department's common-sense clarification regarding employers' obligations to consider ESST time in the determination of incentives and bonuses.

Proposed Rule 5200.1208 (Misuse of Earned Sick and Safe Time)

MELC supports the important principles underlying Proposed Rule 5200.1208 and appreciates the Commissioner's substantial effort to balance employee rights with appropriate protections for employers against misuse of ESST and to provide additional clarity regarding circumstances in which employers may fairly act in response to misuse.

However, the Department might revisit the specific language of Subpart 3 ("No restriction on use.") in the context of clear patterns of misuse or a single clear instance of misuse. By way of illustration only, if an employee asks for a vacation day, which is denied, after which the employee promptly submits to use ESST for the same day, Subpart 3 as drafted seems to suggest that the employer must allow the employee to use the ESST notwithstanding "suspicion that the employee may misuse earned sick and safe time," but may discipline the employee for the use of ESST based on the "clear instance of suspected misuse." That would seem to be an incongruous and inefficient outcome. Rather, if the Department's intent is to say that employers may not deny an employee the *legitimate* use of earned sick and safe time based on prior instances of misuse, that outcome could easily be achieved by the addition of a qualifier in the first sentence of Subpart 3.

Proposed Rule 5200.1209 – More Generous Sick and Safe Time Policies

Respectfully, MELC remains concerned with the provisions of Subpart 1 of this Proposed Rule applying the minimum standards and requirements of the ESST statute to an employer's vacation or PTO allotments whenever an employer permits an employee to use such leave for an ESST qualifying purpose. As set forth in MELC's prior comments, that interpretation is not required by the statutory language and risks substantial

unintended negative consequences as employers will be motivated to be more restrictive, rather than more flexible, in allowing employees to use such time.

However, MELC appreciates the important clarification in Subpart 2 of the Proposed Rule that leave under the Minnesota Paid Family and Medical Leave statute is a "salary continuation benefit" not subject to the minimum requirements of the ESST statute.

Thank you for your time and your consideration of MELC's comments; we would appreciate the opportunity for further discussions.

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Minnesota
Employment
Law Council

MEMORANDUM

TO:	Krystle Conley, Rulemaking Coordinator (dlirules@state.mn.us) Office of the General Counsel Minnesota Department of Labor & Industry
FROM:	Minnesota Employment Law Council
DATE:	April 2, 2025
RE:	Comments on proposed rules governing Minnesota Earned Sick and Safe Time (proposed Minn. R. 5200.1200 et seq.)

Thank you for the opportunity to comment on the proposed rules concerning Minnesota's Earned Sick and Safe Time Statute (Minn. Stat. §§ 191.9445 – 181.9448). The Minnesota Employment Law Council's ("MELC") members appreciate the effort that has gone into the rulemaking process. MELC offers the following comments for consideration.

Proposed Rule 5200.1202 – Hours Worked

MELC members appreciate the good faith effort to address concerns about accrual for employees who do not work primarily in Minnesota.

As a preliminary matter, it may be helpful for Rule 5200.1202 to affirm that the accrual rules do not apply to persons who are not an "employee" pursuant to the 80-hour threshold set forth in Minn. Stat. 181.9445, subd.5. That is, an employer is not required to track hours for persons who the employer anticipates will work less than 80 hours in Minnesota during the employer's accrual year.

Similarly, it would provide useful guidance to employers if subp. 3 addressed exempt employees who do not track time and for whom there often would not be a "replacement worker" or "similarly situated employees." For example, consistent with Minn. Stat. 181.9446(c), subpart 3 could confirm that exempt employees are "deemed to work" 8 hours in a work day in Minnesota for purposes of accruing earned sick and safe time, unless the time spent working in Minnesota on a given day is actually shorter.

Finally, MELC believes that subpart 1(C) could be clearer regarding the intended meaning of a "change in circumstances." To be sure, in many cases (i.e., a promotion or transfer), a "change in circumstances" may be obvious. In other situation, an employee may work more than 50% of their time in Minnesota based on developments over the course of the year, none of which might be considered a "change in circumstances." Assuming that the employer began the year anticipating, in good faith, that the employee would work less than 50% of their time in Minnesota, what is the outcome if the employee ultimately works more than 50% of their time in Minnesota without a "change in circumstances"?

Proposed Rule 5200.1203 – Time Credited and Increments of Accrual

MELC supports the common sense provisions set forth in Proposed Rule 5200.1203 to simplify the process of crediting accrued ESST.

Proposed Rule 5200.1204 – Accrual and Advancing Methods

Likewise, MELC supports the common sense provisions set forth in Proposed Rule 5200.1204 to clarify employers' options and obligations with respect to advancing ESST time for employees.

Proposed Rule 5200.1205 – Employee Use

MELC supports the provisions set forth in Proposed Rule 5200.1205.

Proposed Rule 5200.1205 – Misuse of Earned Sick and Safe Time

MELC supports the important principles underlying Proposed Rule 5200.1206 and appreciates the Commissioner's effort to balance employee rights with appropriate protections for employers against misuse of ESST. However, MELC offers two comments for consideration.

First, in Proposed Rule 5200.1206, subp. 2, MELC recommends that the instances of misuse described in subsections A and B be clarified as examples of misuse, rather than the limited circumstances in which misuse may be found. While the instances described in subsections A and B may be among the most common, other individual circumstances might likewise involve misuse, and MELC proposes that an employer should equally be entitled to the protections of the proposed rule if the evidence demonstrates misuse in other circumstances. Consider the following at Lines 6.1-6.2:

> A pattern of misuse includes, but is not necessarily limited to, evidence that for a claimed unforeseeable use pursuant to Minnesota Statutes, section 181.9447, subd. 2:

By way of example, the proposed rule as drafted only contemplates misuse under circumstances involving "claimed unforeseeable use." However, misuse might also occur if evidence shows that an employee improperly used planned ESST for a non-qualifying reason.

Finally, MELC recommends clarification of employers' rights in the event of misuse, as stated in subp. 3. While it would certainly be appropriate to state that an employer may not deny an employee's use of ESST for a qualifying reason based on previous misuse, the last clause of subp. 3 ("or the employer's suspicion that the employee may misuse earned sick and safe time."), suggests that an employer's hands are tied – that is, even if an employer has identified a pattern of misuse, it must allow the pattern to continue. Respectfully, as drafted, the rule leaves employers deeply uncertain what steps may be taken in the event of misuse. As such, MELC recommends a revision of that subpart to clarify and balance employer rights with appropriate employee protections. Consider the following alternative language:

> **Consequences of misuse.** An employer may not deny an employee accrual or use of earned sick and safe time for a qualifying reason based on previous misuse of earned sick and safe time by the employee, and may not retaliate against an employee for use of earned sick and safe time for a qualifying reason in accordance with Minn. Stat. § 181.0447, subd. 6. Notwithstanding the foregoing, it shall not be considered retaliation in violation of Minn. Stat. § 181.0447, subd. 6, for an employer to do any of the following:
>
> A. requesting documentation consistent with subp. 2,
>
> B. deny an employee use of earned sick and safe time in a manner consistent with the prior pattern of misuse, or

C. discharge or discipline an employee for a pattern of misuse, including but not limited to assigning instances of misuse of earned sick and safe time as unexcused absences pursuant to the employer's absence control policy or attendance point system.

If the Commissioner believes that the foregoing recommendations are not properly included in the rules, MELC respectfully requests that the rules specify more clearly what employers may or may not do in response to a pattern of misuse, to avoid disputes between employers and employees regarding those situations.

Proposed Rule 5200.1207 – More Generous Sick and Safe Time Policies

MELC appreciates the clarification in the Proposed Rule that use of PTO for non-qualifying purposes is not subject to the minimum standards and requirements of the ESST statute.

Nonetheless, MELC respectfully reiterates its prior comment in its September 6, 2024 memorandum to Krystle Conley that application of the ESST minimum standards and requirements to the entirety of an employer's PTO plan is not required by the language of Minn. Stat. § 181.9448. Consistent with legislative history and good policy, the better interpretation of the phrase "for absences from work due to personal illness or injury" in Minn. Stat. § 181.9448 is that Subdivision 1 refers only to categories of paid time off that are specifically designated for sick and safe time purposes, and imposes the requirements of the ESST statute on hours in excess of 48 only if the employer chooses to provide a greater number of hours specifically designated for ESST-qualifying purposes. This interpretation also is consistent with Minn. Stat. § 181.9446(b)(1) ("The total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, *unless an employer agrees to a higher amount*.") (emphasis added). As such, MELC respectfully proposes that Proposed Rule 5200.1207 clarify limits on the effect of the ESST statute consistent with the foregoing.

Thank you for your time and your consideration of MELC's comments; we would appreciate the opportunity for further discussions.

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Exhibit J

Not enclosed: Chief Judge's authorization to omit proposed rule text
(no authorization was requested)

Docket No.– 25-9001-40129

Exhibit K1

Correction to hearing dates contained in the Dual Notice, as published in the State Register on November 3, 2025

MINNESOTA STATE REGISTER

MONDAY, NOVEMBER 3, 2025
VOLUME 50, NUMBER 18
PAGES 445 - 464

Minnesota State Register

Judicial Notice Shall Be Taken of Material Published in the Minnesota State Register

The Minnesota State Register is the official publication of the State of Minnesota's Executive Branch of government, published weekly to fulfill the legislative mandate set forth in Minnesota Statutes, Chapter 14, and Minnesota Rules, Chapter 1400. It contains:

- **Proposed Rules**
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Printing Schedule and Submission Deadlines

Vol. 50 Issue Number	Publish Date	Deadline for: all Short Rules, Executive and Commissioner's Orders, Revenue and Official Notices, State Grants, Professional-Technical- Consulting Contracts, Non-State Bids and Public Contracts	Deadline for LONG, Complicated Rules (contact the editor to negotiate a deadline)
#19	Monday 10 November	Noon Tuesday 4 November	Noon Thursday 30 October
#20	Monday 17 November	Noon Tuesday 11 November	Noon Thursday 6 November
#21	Monday 24 November	Noon Tuesday 18 November	Noon Thursday 13 November
#22	Monday 1 December	Noon MONDAY 24 November	Noon Thursday 20 November

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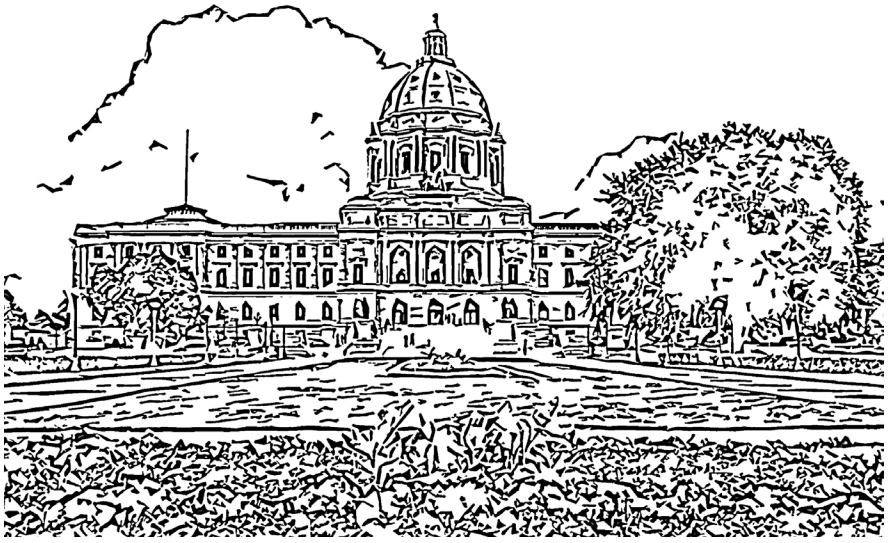

Errata

Appearing in this section are: corrections to agency or *State Register* rule errors, or in following rulemaking processes, as well as incomplete notices, mislabeled rules, incorrect notices and citations. Whenever an error is corrected in this section, its corresponding rule number(s) will also appear in the *State Register's* index to rulemaking activity: ***Minnesota Rules*: Amendments and Additions.**

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Department of Labor and Industry

Errata Notice Regarding the Proposed Permanent Rules Relating to Earned Sick and Safe Time; DUAL NOTICE: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received; Revisor's ID Number: 4877

November 2025

This Errata Notice addresses the proposed rules related to earned sick and safe time for Minnesota Rules, parts 5200.1200 to 5200.1209.

In the sections of the Dual Notice titled "Hearing" and "Cancellation of Hearing," appearing in the State Register dated October 27, 2025, the sections incorrectly state the hearing dates as occurring in 2025. The correct hearing dates are Wednesday, January 21, **2026,** and Thursday, January 22, **2026.** All other information regarding the hearing times and locations is correct.

Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

State Board of Investment

Notice to Institutional Investment Management Firms for consideration to potentially Manage a Portion of the Pension Assets and Other Accounts

The Minnesota State Board of Investment (MSBI) retains institutional investment management firms to manage a portion of the pension assets and other accounts under its control. Periodically, the MSBI will conduct a search for institutional investment management firms on an as needed basis. For additional information on the domestic equity, international equity, fixed income, or overlay portfolio programs for the MSBI, firms are asked to contact the MSBI at the following address for additional information:

Docket No.– 25-9001-40129

Exhibit K2

Judge McKenzie's approval of the Additional Notice Plan dated July 10, 2024

MINNESOTA
OFFICE OF
ADMINISTRATIVE
HEARINGS

PO Box 64620
Saint Paul, MN 55164-0620
mn.gov/oah

PH (651) 361-7900

July 10, 2024

VIA EMAIL ONLY
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Re: ***In The Matter of Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, Part 5200-1200 R-4877***
OAH 25-9001-40129; Revisor R-4877

Dear Mr. Millea:

Enclosed herewith and served upon you please find the **ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN** in the above-entitled matter.

Prior to publishing the request for comments in the State Register, please notify the Office of Administrative Hearings (OAH) at william.t.moore@state.mn.us in order to activate the agency's eComments page on OAH's website if you plan to use eComments. **Please note that if you do not notify us of the publication, the eComments site will not be available to receive public comments.**

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310.

Sincerely,

NICHOLE HELMUELLER
Legal Assistant

Enclosure

OAH 25-9001-40129
Revisor-4877

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In The Matter of Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, Part 5200-1200 R-4877	**ORDER ON REVIEW OF ADDITIONAL NOTICE PLAN**

This matter came before Administrative Law Judge Megan J. McKenzie upon the Minnesota Department of Labor and Industry's request for review of its Additional Notice Plan. The Minnesota Department of Labor and Industry seeks a legal review of its materials under Minn. R. 1400.2060 (2023).

Based upon a review of the written submissions by the Department,

IT IS HEREBY ORDERED THAT:

The Additional Notice Plan is **APPROVED**.

Dated: July 10, 2024

Megan J. McKenzie
Administrative Law Judge

[207317/1]

Docket No.– 25-9001-40129

Exhibit K3

The Department's Responses to public comments received after the publication of the Dual Notice

DEPARTMENT OF LABOR AND INDUSTRY

Proposed Rules Governing Earned Sick and Safe Time: Department Responses to Public Comments

The Minnesota Department of Labor and Industry ("Department") published the *Dual Notice: Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing, and Notice of Hearing if 25 or More Requests for Hearing Are Received*, on October 27, 2025. Interested persons or groups were able to submit written comments to the Department until 4:30 P.M. on November 26, 2025. The Department received 43 comments and more than 25 requests for hearing during the 30-day comment period.

The Department has reviewed all submitted comments. Below are responses to comments submitted after the Department published the Notice of Intent to Adopt Rules. The comment responses are organized by rule and topic. The full comments are available as Exhibit I in the hearing record exhibits. Other hearing record exhibits are cited in footnotes, and bates numbers cited in footnotes correspond to the numbers on the combined exhibits (e.g., DLI0178).

5200.1202, Subp. 1 – Eligibility

One commenter suggested "that the Department should expressly apply the 'good faith' standard articulated in Rule 5200.1202 to the employer's judgment regarding the 80-hour threshold set forth in Minn. Stat. § 181.9445, subd. 5."[1]

The Department agrees that applying the good faith standard to earned sick and safe time ("ESST") eligibility as defined in Minnesota Statutes, section 181.9445, subd. 5, is reasonable and necessary to provide employers and employees with guidance as to the standard upon which these initial eligibility determinations must be made. The Department has therefore amended the proposed rules to include a new proposed subpart in 5200.1202 as subpart 1.[2] The new proposed subpart is necessary to provide employers with a clear, enforceable standard by which to assess whether employees are anticipated to work at least 80 hours in Minnesota in a year. The proposed subpart is reasonable because it aligns with statutory language set forth in section 181.9445, subd. 5, regarding employee eligibility for earned sick and safe time and uses a good faith standard already utilized elsewhere in the proposed rules.[3]

The proposed subpart also clarifies that, even when an employer may not have anticipated the employee would work 80 hours in Minnesota, any employee who reaches that threshold in a year is entitled to accrue ESST

[1] Exhibit I, Comments received after publication of the Dual Notice, DLI0163.

[2] Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, 5200.1202, subp. 1, DLI0194-95.

[3] *See* Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, 5200.1202, subp. 2, item D, DLI0196.

in accordance with the location of hours worked provisions set forth in 5200.1202, subpart 2. This portion of the proposed subpart avoids scenarios in which an employer did not anticipate that the employee would be eligible to accrue ESST, but the employee works more than 80 hours in Minnesota and does not receive any ESST accrual.

The proposed subpart is within the scope of the matter announced in the Department's Notice of Intent to Adopt Rules and in character with the issues raised in that notice, which were generally described as "intended to clarify key issues in the ESST law, including employer administration of ESST benefits, determining hours worked that are subject to ESST accrual, an employee's right to use ESST, incentives related to production or attendance goals, reasonable documentation, employee misuse of ESST, and more generous paid leave policies."[4] The proposed subpart is a logical outgrowth of the Notice of Intent to Adopt Rules and is proposed in response to the comment cited above, which supports the basis for the proposed subpart. Additionally, the effect of the proposed rule does not differ significantly from the effects of the original proposed rules and addresses an issue closely related to the other issues addressed in 5200.1202 (i.e., hours subject to ESST requirements). Therefore, pursuant to section 14.05, subd. 2, the proposed subpart is not substantially different from the rules proposed in the Notice of Intent to Adopt Rules.

5200.1202, Subp. 2 – Location of Hours Worked

The Department received several comments regarding this proposed subpart, and the subpart was repeatedly cited as the basis for submitted requests for hearing. The Department takes seriously the concerns from the employers and the business community about this proposed subpart but believes the rule is well-founded and strikes a fair balance between employee rights to ESST accrual and employers' interest in limiting such accrual where possible within the bounds of the ESST law. The Department addressed each concern noted by commenters below.

Significant Changes in Circumstances

One commenter wrote:

> "Presumably the intent of the rule is to refer to *employer-initiated* changes in circumstances only. If an employee chooses to move or to work more hours in Minnesota (i.e., an employee volunteers for a project involving time spent in Minnesota), an employer may not realize the implications under the ESST statute or be aware of the change so as to provide adequate notice. The word 'significant' is not defined and compliant employers will be uncertain in many instances whether a known change in circumstances is 'significant' or 'nominal' (as described in the SONAR). Mindful that adjustments can and will be made more easily on an employer's regular annual cycles, the Department might consider a more exclusive list of circumstances that would require a mid-year adjustment, such as 'promotion, transfer, reassignment, or change in work location,' in order

[4] Exhibit F, Dual Notice as mailed and as published in the *State Register* on October 27, 2025, 50 S.R. 418, DLI0074.

> to provide clarity for employers and employees alike and avoid unintended disputes.
>
> Alternatively, DLI might consider limiting circumstances requiring mid-year accrual adjustment to employer-initiated actions affecting employees at a department or other business unit level. For larger employers managing the work of hundreds of employees, making judgments regarding a 'significant change in circumstances' for hundreds of individuals, then recalculating leave accruals and issuing notice will be a very substantial undertaking."[5]

First, while the Department acknowledges an employer may not always be immediately aware of the narrow circumstance in which an employee moves to or out of Minnesota, the proposed subpart accounts for this by grounding "significant changes in circumstances" adjustments in the good faith standard, which only requires the employer to make an assessment that is "not *knowingly* false or in reckless disregard of the truth." (Emphasis added.) 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. The other example the commenter provides of an employee volunteering for a project in Minnesota does not relieve the employer of understanding the legal implications of an employee working predominantly in Minnesota, even on a project basis. Additionally, such a situation may be fairly described as a "reassignment," since it is presumably subject to employer approval.

Second, while it is true that the phrase "significant change in circumstances" is not explicitly defined in the proposed rules, the phrase is given definition by the examples that follow: "such as a change in work location or duties." To address the comment on this point, it is reasonable and useful to list more definitional examples of a "significant change in circumstances" in the proposed rule. Therefore, the Department has revised this proposed provision to include "promotion, reassignment, and transfer" as additional examples providing employers with further clarification about what is meant by "significant change in circumstances." The Department believes the examples are largely exhaustive, but limiting the term to only the examples listed risks excluding an unforeseen situation in which an employee may in fact be entitled to additional ESST accrual under item A of the proposed subpart or the employer may be entitled to reduce the employee's ESST accrual under item B.

Third, regarding the commenter's request to limit circumstances "requiring mid-year accrual adjustment to employer-initiated actions affecting employees at a Department or other business unit level," the Department does not anticipate and has not heard from any other commenters that large businesses will be especially burdened by this proposed subpart, particularly since larger organizations often already provide the minimum amounts of paid leave accrual required by the ESST law. Limiting mid-year accrual adjustments to employer-initiated actions affecting employees by group (i.e., at the department or business unit level) would risk individual employees not receiving all ESST accrual to which they are entitled if the group-wide adjustments do not accurately reflect all individual circumstances in the group. However, nothing in the proposed subpart prohibits an employer from making adjustments to an entire business unit when such adjustments are supported by the proposed subpart on an employee-by-employee basis. For example, if an entire business unit is moved from an office in Minnesota to an office in North Dakota in which employees will now work all hours from the North Dakota office, the employer may evaluate whether those employees should have their ESST accrual adjusted in

[5] Exhibit I, Comments received after publication of the Dual Notice, DLI0162.

accordance with the "significant change in circumstances" provision set forth in item C of the proposed subpart. Therefore, because the proposed subpart is intended to be utilized on an employee-specific basis, the Department will not make the commenter's requested adjustment to the proposed subpart.

Expansion of Previous Guidance

One commenter stated, "While we appreciate the effort to provide guidance to employers with employees who work primarily outside of Minnesota, we are concerned that this proposed rule is an expansion beyond existing guidance from the Minnesota Department of Labor and Industry (DLI), which, states that '[h]ours worked in Minnesota will apply to ESST accrual.'"[6]

The Department acknowledges that the proposed rule on accrual within and outside of Minnesota provides greater detail than previous informal guidance in the Department's ESST FAQs. The proposed rule is consistent with the Department's rulemaking authority granted by the Legislature to carry out the purposes of ESST law. The Department refers to the Statement of Need and Reasonableness ("SONAR") for a full explanation of the need for and reasonableness of this propose subpart.[7]

Conflict with Section 181.9446 and Department's Authority to Adopt the Proposed Rule

One commenter noted that section 181.9446 does not explicitly allow for hours worked outside of Minnesota to be counted for purposes of accrual. The commenter also stated, "If the Legislature had intended hours worked outside of Minnesota to be counted for the purposes of ESST accrual, there would be explicit authorization for such in Minnesota statute."

The Department agrees the Legislature could address this issue; however, the Legislature did not and instead provided the Department with rulemaking authority through which this issue and others could be addressed. Notably, the Department has not identified other states whose legislatures addressed this issue. Instead, the states that have addressed this issue have done so via their rulemaking process.[8] The Department believes it is within its rulemaking authority to adopt this proposed subpart.

Another commenter questioned whether the Department can regulate "work performed outside of Minnesota. Such extraterritorial application could create compliance challenges for multi-state employers, including health care systems with employees who may work across borders. We recommend the Department clarify or limit this provision to hours worked within Minnesota to align with jurisdictional boundaries and avoid potential legal conflicts." The commenter proposed ESST accrual be limited to hours worked in Minnesota.[9]

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[6] Exhibit I, DLI0130; "Minnesota Earned Sick and Safe Time (ESST) - Frequently Asked Questions." *Minnesota Department of Labor and Industry*, https://dli.mn.gov/sick-leave-FAQs#coverage. Accessed January 12, 2026.

[7] *See* Exhibit D, Statement of Need and Reasonableness, DLI0038-41.

[8] *See* Exhibit D, Statement of Need and Reasonableness, DLI0057.

[9] Exhibit I, Comments received after publication of the Dual Notice, DLI0123.

The Department does not agree that the proposed rule results in impermissible extraterritorial regulation or exceeds Minnesota's jurisdictional boundaries. Under Minn. Stat. 181.9445, subd. 5, an individual is an "employee" only if the employer anticipates that the individual will perform at least 80 hours of work in Minnesota in a year. That statutory definition establishes the Minnesota nexus and limits ESST coverage as a threshold. Employees who work exclusively outside Minnesota are not covered, and the rule does not change that result.

Once an employee satisfies that statutory definition, employees who work the majority of their hours in Minnesota are entitled to the full protections and requirements of the ESST law, including the ability to accrue ESST for every hour worked up to at least the statutory maximum of 48 hours, regardless of whether the hours worked are outside of Minnesota. In that context, the rule does not regulate the terms and conditions of out-of-state employment; it governs how ESST accrual is calculated under Minnesota law for employees who already fall within the statute's scope based on anticipated Minnesota work. Multi-state employers inherently face compliance challenges in many respects, and challenges would exist even if ESST accrual was limited to hours worked within Minnesota, as the commenter proposed. The Department refers to the reasoning for its proposed rule set forth in the SONAR, as well as its reasoning for not adopting the commenter's proposed rule, which is also set forth in the SONAR.[10]

Tracking Location of Hours Worked

One commenter suggests the proposed rule burdens employers by having to monitor the location of hours worked by their employees. The commenter stated:

> "Under this proposed rule, employers would have to monitor, not only the location of the hours worked, but also whether employees are meeting specific thresholds (such as more than 50 percent of hours worked in Minnesota) and adjust accrual calculations accordingly. This is particularly challenging for small businesses without sophisticated tracking systems, increasing the risk of errors, disputes, and potential legal liabilities. The proportion of time an employee spends working in Minnesota versus another state can fluctuate significantly from year to year, adding an additional administrative burden to track and recalculate accrual rates based on shifting work patterns."[11]

The commenter would prefer the proposed rule limit ESST accrual for all employees to only those hours worked in Minnesota.

First, the Department seeks to avoid adding any additional administrative burden for employers in this rulemaking and does not believe this proposed subpart adds any such burden. Employers are already required to track the locations from which their employees work to comply with other legal requirements. For example, businesses operating in multiple states must track primary work locations for tax and unemployment insurance reporting purposes. Additionally, the commenter's preferred rule to limit ESST accrual to only hours worked in Minnesota would also require monitoring employees' locations of hours worked in order to provide ESST accrual

[10] *See* Exhibit D, Statement of Need and Reasonableness, DLI0038-40 and DLI0056-57.

[11] Exhibit I, Comments received after publication of the Dual Notice, DLI0130.

only for hours worked in Minnesota. The proposed subpart diminishes any perceived administrative burden for tracking locations of employees who work the majority of their hours in Minnesota because those employees will accrue ESST for all hours worked regardless of location.

Second, the commenter's concerns about monitoring "whether employees are meeting specific thresholds (such as more than 50 percent of hours worked in Minnesota) and adjust[ing] accrual calculations accordingly" may be a based on a misunderstanding of the operation of the proposed subpart. So long as employers are making determinations in good faith (as that term is defined in the proposed subpart) about whether an employee is likely to work more or less than 50 percent of their hours in Minnesota, then there is no need to adjust accruals unless the employee has a "significant change in circumstances" as explained in item C of the proposed subpart.[12] The proposed subpart is intended to relieve employers of regular monitoring related to ESST accrual in as many situations as possible by requiring ESST accrual for all hours worked when employees are expected to work more than 50% of their hours in Minnesota. Employees anticipated in good faith to work less than 50% of their hours in Minnesota will accrue ESST consistent with the commenter's preferred rule – only for hours worked in Minnesota.

Third, the commenter's concerns about significant year-to-year fluctuations in locations of hours worked fair no better under the commenter's proposed rule, which would require a strict accounting of all hours worked in Minnesota for every employee. In comparison, the Department's proposed rule provides a safe harbor to employers who make a good faith determination that their employees will work less than 50 percent of their hours in Minnesota by not requiring retroactive accrual if the employee ends up working over 50 percent in Minnesota.

Double Accrual with Other ESST Jurisdictions

One commenter noted concerns about how the proposed subpart "will interact with competing ESST standards in other jurisdictions and the potential for double ESST accrual for the hours worked outside of Minnesota."[13] Another commenter suggested, "The Department should exclude from this rule any employee who is subject to a mandatory paid leave law outside of Minnesota and is already accruing leave hours under the other law for hours worked in Minnesota."[14]

The Department first notes that no states contiguous with Minnesota currently have a corresponding ESST law. The Department also notes that nationwide employers already operate in an environment requiring compliance with multiple ESST laws across the country. Those employers remain compliant by following the ESST requirements most protective of employees in the applicable states in which the employees work. Additionally, when more than one ESST law applies to an employee, such leave may count as both ESST and the leave required

[12] *See* Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, 5200.1202, subp. 2, DLI0196 ("The employer's obligation to provide accrual of earned sick and safe time in accordance with items B and C is met if the employer acts in good faith when anticipating the employee's location of hours worked for an accrual year.").

[13] Exhibit I, Comments received after publication of the Dual Notice, DLI0130.

[14] Exhibit I, Comments received after publication of the Dual Notice, DLI0152.

by that jurisdiction (rather than counting twice).[15] Overall, the Department does not believe there is a need to double count ESST with another state's mandated leave, nor is the Department aware of any circumstances where double counting has occurred or in which an administrative agency or court has found that it must occur.

Additionally, the Department proposed item G in its rules to account for employees who may accrue similar paid leave while working in other jurisdictions that would prohibit the employee from also accruing ESST under Minnesota's ESST law. This proposed item in this subpart accounts for potential conflicts with non-Minnesota jurisdictions, should they arise, by deferring to other jurisdictions when work is performed there, and a direct conflict of laws exists. The ESST law does not provide authority to exclude employees from accruing ESST who simply accrue required leave in other jurisdictions. The Department has not received any other comments requesting similar amended language in this proposed subpart. The Department respectfully declines to adopt the commenter's proposal.

5200.1204, Subp. 1 – Advancing Hours

One commenter stated:

> "[W]hile the rule requires employers to add ESST hours if the actual hours worked exceed the good faith projection, there is no corresponding provision that allows an employer to reduce ESST if actual hours worked are less than projected. This results in a situation in which employers are unable to provide a downward correction – even when accrual has significantly exceeded what the employee would have earned. This creates inequity and serves as a strong disincentive to front-loading or advancing under the statute. We recommend that the rule be amended to allow for a mechanism that provides employers with the option to reduce ESST accrual if actual hours worked are less than projected."[16]

The statutory language in section 181.9448, subd. 1(j), corresponding with the Department's proposed rule does not provide a basis for making downward adjustments, and the Department has not identified any other statutory basis in the ESST law for making downward adjustments to ESST accruals. In contrast, section 181.9447, subd. 1(j), does include language providing a basis for upward adjustments.[17]

Employers who have overestimated the amount of hours an employee would work when they advanced hours must allow that employee to carry those unused hours into the next accrual year. The employer is under no obligation to provide additional accrual until the employee has worked hours needed to equal the amount of ESST advanced to them at a minimum rate of one hour for every 30 hours worked. At that point, the employer can

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[15] *See* Minn. Stat. § 181.9445, subd. 4 (defining ESST as "leave, *including paid time off and other paid leave systems*, that is paid at the same base rate as an employee earns from employment that may be used for the same purposes and under the same conditions as provided under section 181.9447 . . ."). Emphasis added.

[16] Exhibit I, Comments received after publication of the Dual Notice, DLI0131. As a matter of clarification, neither proposed rule 5200.1204, subp. 1, nor section 181.9448, subd. 1(j), include the term "good faith."

[17] "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."

advance additional hours based on a new estimate or begin allowing the employee to accrue hours at one hour for every 30 hours worked.

For example, an employer has an accrual year based on a calendar year. The employer hires an employee on September 15th and advances them 12 ESST hours based on an estimate that the employee will work 360 hours for the remainder of the accrual year. The employee only ends up working 270 hours by December 31, which amounts to nine ESST hours at the one-for-30 accrual rate. The employer will continue to monitor the employee's hours worked in the next accrual year without providing any additional accrual until the employee has worked 360 hours. At that time, the employee is entitled to additional ESST accrual at a minimum rate of one hour for every 30 hours worked.

While the commenter perceives some disincentive in providing front-loaded or advanced ESST hours, employers are not required to either frontload or advance ESST. Therefore, any incentive or disincentive is based on the employer's business needs and interest in using those methods. As long as the employer provides ESST accrual at a rate of one hour for every 30 hours worked they are compliant with the ESST law's minimum accrual standards.

5200.1205, Subp. 1 – Employee use

One commenter suggested that "The [ESST] law says employees *can* use leave for covered reasons, but it would be more beneficial and straightforward to employers *and employees* if the Department interpreted the law to mean that employees *must* use leave when they are absent from work for a covered reason." (Emphasis in original.) The commenter also suggests that the Department's interpretation of section 181.9447, subd. 1, is not the only reasonable interpretation and that another possible interpretation is that a qualifying condition is one of many conditions the employee may need to satisfy to have the ESST law's protections apply to the absence. The commenter cites other conditions that must be satisfied, including providing adequate notice to the employer, having ESST hours available for use, etc. The commenter also asserts that "an employer defaulting to paying and protecting an employee will minimize more disputes surrounding an absence than only doing so if an employee utters the 'magic' words 'I am requesting to use [X] hours of sick and safe time for this absence.'"[18]

The commenter proposes a rule, that an employee "must" use ESST when absent for a qualifying purpose, which contradicts the plain statutory language that Department's proposed subpart codifies. While an employee must have an available ESST balance in order to use ESST, as explained in the SONAR, employees' right to determine when they will use ESST is based on the plain language of the statute. Nothing in the ESST law contradicts that plain reading.[19] Merely being absent for a qualifying purpose does not require that the employee be forced by their employer to use ESST, as compared with, for example, choosing to use a different type of leave, making up the absence by working alternative hours, or simply taking unprotected, unpaid time off that is subject to the employer's customary time and attendance policies. There is no statutory basis for an alternative rule requiring employees to use ESST whenever they are absent for a qualifying purpose.

[18] Exhibit I, Comments received after publication of the Dual Notice, DLI0153.

[19] *See* Exhibit D, Statement of Need and Reasonableness, DLI0047-48.

Separately, while the Department also wishes to avoid employer-employee disputes about whether an employee has or has not invoked their right to use ESST. Nothing in the ESST law prohibits an employer from inquiring as to the reason for an employee's absence.[20] More specifically, nothing in the ESST law prohibits an employer from asking an employee, "Is your absence for an ESST-qualifying purpose and do you wish to use ESST for your absence?" Such questions directed to employees are practical may be necessary to ensure both parties have a common understanding of the basis for the absence (e.g., unexcused, ESST, vacation, etc.). The Department respectfully declines to amend this proposed subpart as suggested by the commenter.

5200.1207 – Reasonable Documentation

Defining "Reasonable Amount of Time"

One commenter suggested, "With respect to Proposed Rule 5200.1207, the Department would provide further important clarity if it offered a baseline understanding of the phrase 'a reasonable amount of time to provide reasonable documentation,' recognizing that phrase is likely intended to be flexible and account for individual circumstances."[21]

The Department has opted to not further define a "reasonable amount of time to provide reasonable documentation" because such a definition may impose a minimum or maximum limit on the amount of time deemed reasonable, which may not be reasonable in all circumstances. Different types of reasonable documentation will likely require different reasonable amounts of time. Accordingly, the Department believes that employers and employees are best positioned to determine the timelines for when reasonable documentation will be required on a case-by-case basis.

Reasonable Timeframe

Two commenters also suggested employers be allowed to require reasonable documentation from employees in a "reasonable timeframe" and if such documentation was not submitted in the required timeframe the leave would not qualify for ESST protections.[22] This issue is addressed via proposed rule 5200.1207, which aligns with these commenters' proposal. In situations where an employer can request reasonable documentation, employees who do not provide requested reasonable documentation in a reasonable amount of time do not get the benefit of ESST job protections.

[20] The Department is referring to the employer's ability to ask the employee why they are or will be absent rather than referring to the employer's right to request reasonable documentation.

[21] Exhibit I, Comments received after publication of the Dual Notice, DLI0163.

[22] Exhibit I, Comments received after publication of the Dual Notice, DLI0111 and DLI0124.

5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse

Examples of Suspected Misuse

One commenter read the examples listed in this proposed subpart as exclusive examples of the only situations in which an employer can request documentation for a pattern or clear instance of suspected misuse. The commenter stated, "[T]he examples provided are too limited and do not capture the full range of potential misuse patterns common in health care settings . . . To address this, the rules could solve the issue with a slight language modification: 'A pattern or clear instance of suspected misuse includes, but is not limited to: . . .' This would provide flexibility for employers to address misuse based on context-specific evidence without being constrained to a narrow list."[23]

As explained in the SONAR on page 37, the examples are intended as a non-exclusive list and as illustrations of what an employer may consider a pattern or clear instance of suspected misuse. The Department used the term "includes" rather than "means" in the sentence preceding the list of examples to indicate that the list was non-exclusive. However, the commenter's concern indicates that the current language is not sufficiently clear, and the Department agrees that adding the phrase "but not limited to" would add clarity. Therefore, the Department agrees to make this requested modification to the proposed rule, which is merely a clarification, and does not change the intent or impact of the proposed rule.

Reasonable Documentation for all ESST uses

Two commenters requested that the Department adopt a rule in which an employer may request reasonable documentation from employees in accordance with the requirements in section 181.9447, subd. 3(b)-(f), for each ESST use, and if the documentation is not provided then the employee's absence would be subject to employer's regular attendance policies and not considered job protected leave.[24] A rule as the commenter proposes would conflict with the language and intent of section 181.9447, subd. 3(a), which allows requiring reasonable documentation when ESST is used for more than two consecutive scheduled work days. The Department's proposed rule only allows for reasonable documentation requests in the narrow circumstances of suspected misuse of ESST, which aligns with the intent of section 181.9447, subd. 3(a), and provides employers with the option to inquire further in circumstances in which misuse is suspected and has a higher likelihood of occurring. To allow for reasonable documentation requests for each absence would impact employees who are legitimately using ESST. Therefore, the Department respectfully declines to adopt such a rule.

Adequate Notice of ESST use and Tracking Systems

Two commenters also suggested being able to use an electronic tracking system as a primary method of receiving employee requests to use ESST, in which the employee would note the qualifying purpose and "if [the employee chooses] not to submit the request within a reasonable time, the leave would not be ESST-eligible for

[23] Exhibit I, Comments received after publication of the Dual Notice, DLI0123-24.

[24] Exhibit I, Comments received after publication of the Dual Notice, DLI0111 and DLI0124.

that occurrence."[25] The Department's proposed rules do not address this question, but section 181.9447, subd. 2, requires employees to provide up to seven days' notice for foreseeable ESST and "as reasonably required by the employer" for unforeseeable absences, so long as the employer has conveyed these requirements in a written policy provided to the employees. If an employee fails to provide timely notice in accordance with the written policy, an employer may deny the requested ESST leave. Additionally, nothing in the ESST law or the proposed rules prohibits an employer from using a tracking system or portal for employees to submit requests to use ESST.

5200.1208, Subp. 3 – No Restriction on use

Clarifying the Intent of Subpart 3

One commenter wrote:

> The Department might revisit the specific language of Subpart 3 ("No restriction on use.") in the context of clear patterns of misuse or a single clear instance of misuse. By way of illustration only, if an employee asks for a vacation day, which is denied, after which the employee promptly submits to use ESST for the same day, Subpart 3 as drafted seems to suggest that the employer must allow the employee to use the ESST notwithstanding "suspicion that the employee may misuse earned sick and safe time," but may discipline the employee for the use of ESST based on the "clear instance of suspected misuse." That would seem to be an incongruous and inefficient outcome. Rather, if the Department's intent is to say that employers may not deny an employee the *legitimate* use of earned sick and safe time based on prior instances of misuse, that outcome could easily be achieved by the addition of a qualifier in the first sentence of Subpart 3.[26]

The Department's consideration of this comment led to a minor rule revision to clarify that employers must not deny ESST use *for a qualifying purpose* based on a prior misuse of ESST or a suspicion that the employee may misuse ESST. Although this addition does not result in any change in the operation or impact of the proposed subpart, the addition of "for a qualifying purpose" to this proposed subpart helps draw a distinction between job-protected uses of ESST (i.e., legitimate uses for a qualifying purpose) and misuse of ESST, which may be denied if the employer has confirmed the misuse prior to its scheduled use by the employee. This was explained on page 29 of the SONAR, which states, "Whether such discipline may include the denial of ESST is limited to scenarios where the employer confirms the misuse (i.e., not mere suspicion of misuse) prior to the employee using ESST for the absence." In contrast, "In situations where the employer confirms misuse after the employee has used ESST, the employer may not deny future ESST use."[27]

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[25] *Id*.

[26] Exhibit I, Comments received after publication of the Dual Notice, DLI0163.

[27] Exhibit D, Statement of Need and Reasonableness, DLI0052.

Denial of ESST for Prior Misuse

One commenter wrote:

> We continue to believe, and strongly recommend, that the proposed rules should be amended to explicitly allow employers to consider previous, documented instances of misuse when determining whether new claims display patterns consistent with past misuse. This is particularly important in instances where there is an established, documented pattern of misuse. By prohibiting the denial of ESST use in such instances, the employer must essentially continue to allow the misuse to occur, which goes against the spirit of practical oversight and good-faith administration that should guide ESST compliance.[28]

While the Department understands some employers may be frustrated with this proposed subpart placing a limitation on an employer's ability to deny future ESST use based on past misuse, any amendment to the proposed subpart to allow for such denial would conflict with the employee's right to use ESST for a qualifying purpose. While an employer may risk employee claims of retaliation where it denies ESST use or disciplines an employee for suspected misuse when the employer lacks evidence confirming the misuse, nothing in the proposed rules or the ESST law prohibits employers from considering past ESST misuse to determine whether an employee should be disciplined for verified current or otherwise on-going misuse. The proposed rule is clear that actual misuse of ESST, as opposed to mere suspicion of misuse, is not subject to ESST job protections and therefore may be subject to employer discipline.[29]

5200.1209, Subp. 1 – Excess Paid Time Off

Proposing Different Interpretations

One commenter noted that they:

> [R]emain concerned with the provisions of Subpart 1 of this Proposed Rule applying the minimum standards and requirements of the ESST statute to an employer's vacation or PTO allotments whenever an employer permits an employee to use such leave for an ESST qualifying purpose. As set forth in MELC's prior comments, that interpretation is not required by the statutory language and risks substantial unintended negative consequences as employers will be

[28] Exhibit I, Comments received after publication of the Dual Notice, DLI0131-32.

[29] *See* Exhibit D, Statement of Need and Reasonableness, DLI0052 ("Whether such discipline may include the denial of ESST is limited to scenarios where the employer confirms the misuse (i.e. not mere suspicion of misuse) prior to the employee using ESST for the absence. In situations where the employer confirms misuse after the employee has used ESST, the employer may not deny future ESST use."); *see also* Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, 5200.1208, subp. 3, DLI0201 ("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.").

> motivated to be more restrictive, rather than more flexible, in allowing employees to use such time.[30]

The commenter's prior comment, submitted to the Department on April 2, 2025, proposed that the phrase "'for absences from work due to personal illness or injury' in Minn. Stat. § 181.9448 in Subdivision 1 refers only to categories of paid time off that are specifically designated for sick and safe time purposes, and imposes the requirements of the ESST statute on hours in excess of 48 only if the employer chooses to provide a greater number of hours specifically designated for ESST-qualifying purposes." The commenter asserts this interpretation is also consistent with section 181.9446(b)(1).[31]

The proposed subpart is merely codifying the operation of the pertinent language in section 181.9448, subd. 1(a).[32] Therefore, the commenter's concerns about this proposed subpart are concerns about the statutory language in section 181.9448, subd. 1(a). The statutory language cannot be interpreted via rule in a manner that conflicts with the statutory language.

The commenter's interpretation of the phrase, "for absences from work due to personal illness or injury," as meaning only time that the employer "specifically designate[s] for [ESST] purposes" is incongruent with what the Legislature intended. Section 181.9448, subd. 1, was specifically amended by the Legislature in 2024 to address the previous repeal of section 181.9413 (Sick Leave Benefits; Care of Relatives) when the ESST law was first enacted in 2023. Therefore, this provision descends directly from section 181.9413, which required employers who offered "personal sick leave benefits" to employees to allow those leave benefits to be used for care of the employees' relatives.

The repealed section defined "personal sick leave benefits" as leave available to an employee "to be used as a result of absence from work due to personal illness or injury." Section 181.9448, subd. 1, performs the same function in that leave benefits offered to employees for personal use must also be available for broader uses, including care of relatives, and now, all of the ESST qualifying uses. Like the pre-ESST law, this provision does not require that employers offer employees such personal sick leave benefits, but if they do, then the law imposes certain conditions. In sum, employers still have the option to offer or not offer PTO or other leave that can be used by employees for personal sick leave uses – neither the statute nor the proposed rule places a requirement that sick leave (beyond the ESST minimums) be offered. The law merely imposes conditions on uses of that leave time if the employer elects to offer it to employees.

Additionally, the commenter's preferred result can be achieved under the Department's proposed subpart. Employers may still designate time as available for absences from work due to personal illness or injury, or exclude amounts of paid leave from being available for that use. Any time that is excluded from being available

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[30] Exhibit I, Comments received after publication of the Dual Notice, DLI0163-64.

[31] Exhibit I, Comments received after publication of the Dual Notice DLI0167; *See also* Minn. Stat. § 181.9446(b)(1) ("The total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, *unless an employer agrees to a higher amount*.") Emphasis added.

[32] *See* Minn. Stat. § 181.9448, subd. 1(a) ("All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446.").

for use due to "personal illness or injury" is not subject to the proposed subpart. And any time that is made available for such use is only subject to ESST minimum standards and requirements when it is used for an ESST qualifying purpose.

Finally, the Department's proposed rule is also consistent with section 181.9446(b)(1) because nothing in the rule requires the employer to offer additional paid leave. The proposed subpart merely clarifies the application of minimum ESST standards and requirements to the additional paid leave the employer agrees to offer.

Another commenter wrote:

> A fairer and more reasonable interpretation that aligns with the entire law is that sick and safe time standards and requirements apply only when employee[s] use the portion of a more generous paid leave benefit that the law and an employer's policy entitles them to use for statutory leave purposes and, once they exhaust their statutory entitlement, any further use of such leave is outside the scope of the law and governed exclusively by employer policy.[33]

The commenter's proposed interpretation appears to ask the Department to disregard the corresponding statutory language in section 181.9448, subd. 1(a). The commenter suggests that all paid leave or paid time off beyond what the law minimally requires (i.e., 48 hours accrual per year and 80 hours at any time) is exempt from the ESST law's minimum standards and requirements unless the employer chooses to make it subject to ESST. This interpretation is in direct conflict with the statutory language, which requires all ESST minimum standards and requirements, except for accrual requirements in section 181.9446, to be applicable to all paid leave available for personal illness and injury and used for an ESST-eligible purpose. The commenter also pointed to other jurisdictions as having more favorable interpretations on this issue but did not cite any jurisdictions with statutory language similar to section 181.9448, subd. 1(a). The Department cannot simply disregard this statutory language.

Both interpretations requested by commenters amount to a statutory change, which is not allowable via rulemaking. Therefore, the Department respectfully declines to amend the proposed rule to reflect either commenter's proposed interpretation of section 181.9448, subd. 1(a).

Concerns About Section 181.9448, subd. 1(a)

One commenter stated that proposed rule 5200.1209, subp. 1, "affirms that employees with more generous paid time off may use it all for sick and safe time purposes. This remains a problematic portion of the ESST statute, and we urge the Department to continue pushing for clarification or revision in this area."[34] The commenter also noted concerns about the impact of the statute and rules on current employer leave policies and collective bargaining.

First, the Department would like to clarify that the proposed subpart does not apply to all employer leave policies. The statute and proposed subpart only apply to ESST use under more generous leave policies when the excess paid leave is made available for "absences from work due to personal illness or injury, but not including

[33] Exhibit I, Comments received after publication of the Dual Notice, DLI0153.

[34] Exhibit I, Comments received after publication of the Dual Notice, DLI0124-25.

short-term or long-term disability or other salary continuation benefit."[35] Second, as the Department explained in the SONAR on page 30, the proposed subpart merely clarifies the meaning of the statutory language enacted by the Legislature, which has been a source of confusion for stakeholders. The Department does not have the authority to change the statutory language or adopt a rule in conflict with it.

Defining "Personal Illness or Injury"

One commenter requested the Department "clarify and provide examples of what does not constitute a personal illness or injury absence" and provided a list of proposed examples that should be excluded from the meaning of "personal illness or injury."[36]

The Department respectfully declines to adopt a definition or otherwise provide examples of what is excluded from the scope of that term. A regulatory definition of "personal illness or injury absence" is not necessary because the ordinary meaning of "personal illness or injury" comprises common, nontechnical terms with settled everyday meanings. The term "personal illness or injury" was used in the now-repealed section 181.9413 regarding sick leave benefits and care of relatives. Section 181.9413 was repealed when the ESST law was originally enacted in 2023. The repealed section specifically required personal sick leave the employer chose to offer to employees to be available for use beyond the employee's own needs: namely, the care of relatives. In 2024, the Legislature determined that some of the repealed statute needed to be reincorporated into the ESST law, which was done via amendment to section 181.9448, subd. 1(a).[37] Section 181.9413 did not provide a definition of "personal illness or injury," and the Department is not aware of any issues related to the interpretation of that term in the roughly 32 years in which that term was included in section 181.9413.[38] Employers, employees, courts, and the Department have been able to apply the term without difficulty or widespread dispute. The Department expects the same result for this term in section 181.9448, subd. 1(a).

[35] Minn. Stat. § 181.9448, subd. 1(a); Exhibit K4, Proposed Rule, as modified, post Dual Notice publication and comment period, 5200.1209, subp. 1, DLI0201.

[36] Exhibit I, Comments received after publication of the Dual Notice, DLI0159.

[37] Laws of Minnesota 2024, chapter 127, article 11, section 15.

[38] "Personal illness or injury" was added to section 181.9413 in 1991. Laws of Minnesota 1991, chapter 268, section 2.

Docket No.– 25-9001-40129

Exhibit K4

Proposed Rule, as modified, post Dual Notice publication and comment period

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 subpart 2.

~~Subpart 1~~ Subp. 2. **Location of hours worked.** An employee accrues earned sick and safe time in accordance with Minnesota Statutes, section 181.9446, paragraph (a), as follows:

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

B. if the employee will work 50 percent or more of their hours for the employer outside of Minnesota in an accrual year, then only the employee's hours worked in Minnesota count toward their accrual of earned sick and safe time. The employer must determine in good faith before the start of employment and the beginning of the accrual year whether the employee will accrue earned sick and safe time under this item, unless the employer will provide the employee with at least 48 hours of earned sick and safe time during the accrual year;

C. if a significant change in circumstances will occur during an accrual year, such as a promotion, transfer, reassignment, or a change in work location or duties, the employer must determine in good faith whether the employee will accrue earned sick and safe time under item A or B. 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. The employer must give the employee written notice of such a change prior to the date the change takes effect under Minnesota Statutes, section 181.032, paragraph (f). Any accrued but unused earned sick and safe time remains available for the employee to use during the accrual year;

D. for the purposes of this subpart, "good faith" means the employer, at a minimum, evaluated the employee's anticipated work schedule and locations of work in a manner that is not knowingly false or in reckless disregard of the truth. The employer's obligation to provide accrual of earned sick and safe time in accordance with items B and C is met if the employer acts in good faith when anticipating the employee's location of hours worked for an accrual year;

E. for the purposes of this subpart, an employee who is teleworking is considered to be working in the state where they are physically located while performing telework;

F. notwithstanding this subpart, an employer is permitted to provide earned sick and safe time in excess of the minimum amount required under Minnesota Statutes, section 181.9446; and

G. 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.

Subp. ~~2~~ 3. **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~~ 4. **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. Changes to accrual under part 5200.1202, subpart ~~1~~ 2, item C, are not subject to this subpart.

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.

Docket No.– 25-9001-40129

Exhibit K5

Comments received after publication of the first Request for Comment

From: Ali Timpone
To: RULES, DLI (DLI)
Subject: ESST comments
Date: Monday, July 22, 2024 10:59:55 AM

Good morning,
My concern/comment about ESST relates to the new requirement that all paid leave for illness/injury is subject to ESST provisions.
Currently, FMLA guarantees that an employee may not be terminated for absences due to an FMLA-qualifying leave. After 12 weeks, the employer must further comply with ADA and accommodate an employee's leave as long as it doesn't cause an undue hardship.
Our employees may accrue up to 2400 hours of "sick" leave hours in their bank (we call it "mid-term disability hours"), and the new clarification in law makes all hours subject to ESST requirements.
Approving more than 12 weeks of leave may be an undue hardship and employers need clarification about their right to deny leave beyond the FMLA and ADA requirements.
We do not want to appear as if we are retaliating against an employee by ending employment beyond 12 weeks if we are unable to accommodate additional time away from work due to a medical absence.
Please add clarification for employers in this situation.
Thank you for asking for comments.

Ali Timpone | HR Director
City of Plymouth
3400 Plymouth Boulevard
Plymouth, MN 55447
Phone: 763.509.5070
atimpone@plymouthmn.gov
Plymouth, Minnesota | Adding Quality to Life

She/her (Why include this?)
I acknowledge that we are on Očhéthi Šakówiŋ and Wahpekute land.

From: Annette Salonek
To: RULES, DLI (DLI)
Subject: Attn: Krystle Conley, Rulemaking Coordinator, Office of General Council
Date: Monday, July 22, 2024 11:57:39 AM
Importance: High

Dear Krystle,

I would like to submit a comment on the ESST rule. I have found that many businesses are using their previous PTO as ESST. Because of that, employees are able to use their ESST for anything they please (like vacation) because the PTO is included in the ESST. It doesn't make sense to me that there are all these rules about what you can use your ESST on, when it doesn't really matter. So if I have a vacation planned and am going to use my PTO hours and then something happens and I get sick beforehand, I can use my ESST for the sick hours - BUT then I may not have enough hours left to cover any of the vacation time off.

For example, the rule states that, "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." But that leave can also be used for vacation or just taking a day off it I want to, because it's now part of the PTO.

By allowing employers to use their prior PTO policy as ESST , it is taking away from employees being able to stay home with their sick child - for example (and receive pay for any of that time), because they used all their hours up on, let's say, the vacation they just took. If you could explain the reasoning behind letting employers use their prior PTO policy as the new ESST, I would greatly appreciate it.

Thank you for your time and consideration.

Sincerely,
Annette Salonek

From: Carmie Mick
To: RULES, DLI (DLI)
Subject: ESST Request for Comments
Date: Monday, July 22, 2024 9:30:49 AM
Attachments: image001.png
image002.png
image003.png
image004.png

Krystle Conley, I don't know if this is where we send our comments. However, I prepared some below: I also REQUEST TO RECEIVE A DRAFT OF THE RULES WHEN IT HAS BEEN PREPARED.
The requirement of employers to simply give time off upon request for "I'm sick" with no recourse from the employer that could be based entirely on poor attendance is very unfair and restrictive in identifying employees who are simply taking advantage of this new policy. Never before have we had such a poor attendance problem based on calling in sick. And what can we do as the employer? Nothing. The fact that I would presume 70% or greater of ALL ESST requests are now just call in's because they don't want to work that day, did NOT solve a problem, it just created another.
This will follow suit with the lack of factual criteria for the Paid family leave act for 2026 as well. I cannot begin to explain how wrong this is all being designed!
The other MAJOR flaw with the lawmakers making this ESST law was the complete vagueness in how it was to be formed. Again, most small, mid and certainly Large employers already have PTO above these state standards. Some if not most, have a sick day policy and time off available. I can see how it was drafted for retail or the food industry that didn't offer anything. Well, then it should have been drafted that way.
The state WASTED all of these hard working employers time by putting together such a POOR thought out law and for companies already doing this. AND what do you think transpired? There is such confusion, I have seen companies ADD more time, based on this law when they didn't have to. I've seen others follow it exactly and then I've seen others Read the fine print where it states that if your PTO policy already meets the minimum requirements, then you do not need to change anything, nor the name. That little TID BIT was at the bottom. I've seen CITY Offices, who already offer Paid Sick, plus PTO, ADD more, even the 80 hour cap. Like the city workers didn't already have enough? I'm my opinion this was a way to get all city, state and other government entities a way to have more paid time off. The rest of the businesses just had to deal with it.
SO go back to the drawing board and fix these things 1) ALLOW employers the ability to deny on a basis of zero documentation or repeat/pattern, etc. better yet, take out the state rules on that completely! Otherwise it is just an abused law and prevents employers from terminated those that ALREADY have abused their attendance policies. Now they just get by with it with this law. 2) Go back and change the law to state that if an employer already meets these requirements, then there needs to be NO changes to their existing, and that the employer's existing attendance policy can override potentially some sick requests. This should have been stated NUMBER 1, not hidden in the

fine print!

Carmie Mick – President

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https://cwmfcorp.com/

From: Bailey, Jamie
To: RULES, DLI (DLI)
Subject: Comments - MN ESST
Date: Thursday, July 25, 2024 11:14:34 AM
Attachments: image001.png

Hi Krystle,
The below comments relate to the MN ESST. Thanks for your consideration!
As written 226.3 Subdivision 1. requires employers with separate leave plans such as Vacation, Personal Business, and Sick and Safe time to extend the MN ESST rules to all the leave plans to the extent that an employee could use the time off for personal illness or injury under each plan. Extending the rules would be quite an undertaking, significantly modifying the plans not intended for MN ESST rule alignment solely for employees working in Minnesota. The easiest plan modification would mean limiting MN ESST covered absences to the MN ESST plan to avoid an overhaul of all the plans. For example, our salaried non-exempt employees receive 160 hours of time for personal illness and caregiving (PIC) which already covers all MN ESST covered absence reasons. Additionally, this same population receives 40 hours of personal business time. When PIC is exhausted an employee can use personal business time for reasons related to personal illness and injury. The same goes for the 2-6 weeks of vacation provided to this group. PIC (used for MN ESST), Personal Business and Vacation are separate leave plans, each with unique features enabling us to be competitive in the marketplace while satisfying employee needs. If we limit MN ESST covered absences to the PIC plan, to avoid redesigning the Personal Business and Vacation plans, that will a take-a-way for employees. It would be much easier for employers and in alignment with other state ESST law, if you confine the ESST rules to the required 48 hours of MN ESST time off, not extending the rules to other time off plans which would be complex and expensive to re-configure and confusing to employees. Changing all the leave plans for MN would require separate on-going employee, people leader, and Human resource partner custom communications without a corresponding benefit. At a minimum, applying the rules to the time off plan used to provide the 48 hours would be far preferable. This would mean modification of our PIC plan as opposed to modification of all leave plans.
As written 223.16 Subd. 5. requires leave in a minimum increment of no less than 15 minutes. The earlier language is preferable with a couple updates as underlined: “Earned sick and safe time may be used in the smallest increment of absence time tracked by the employer's payroll system, provided such increment is not more than one hour”. 15 minutes is too small an increment for many employers requiring updates to payroll rules and time & attendance systems. Other states with ESST law use one hour or four hours.
Thank you for your time today.

Jamie Bailey
Sr Health & Welfare Compliance Lead
HR - People Operations

GE HealthCare
C (518) 698-5045
Jamie.Bailey1@gehealthcare.com
https://www.gehealthcare.com

From: Kim Tyler
To: RULES, DLI (DLI)
Subject: Earned Safe and Sick Time
Date: Monday, July 22, 2024 9:18:18 AM

The idea of Safe and Sick TIme is a good one; however how are employers supposed to pay for it? Not only is there a cost for the safe and sick time but the administrative cost to track it are considerable.

The biggest issue is for Minnesota state funded fee for service as the State is not picking up the cost for their rule. The fee for service rates need to be increased to cover these costs.

Kim

From: Kim Wojack
To: RULES, DLI (DLI)
Subject: Request for comments regarding Sick and Safe Leave
Date: Monday, July 29, 2024 5:58:58 PM

Can you please clarify how many employees an employer must have under the new Sick and Safe Leave? For instance, if an employer has less than 10 employees, the law as I understand it, could become a hardship for small business owners. Eligibility for FMLA requires employers to have more than 50 employees. Is there a similar requirement for this new law?
Thank you in advance.

Kim Wojack

From: cldnoffice
To: RULES, DLI (DLI)
Subject: ESST
Date: Tuesday, July 23, 2024 5:13:55 PM

My comment on the ESST is that it should be for businesses that do not already give their employees at least 48 hours or more of Paid Time Off. PTO can be used for whatever the employee wishes whether it is sick time, vacation, or other personal needs. It seems cumbersome to follow all the ESST rules if you are already giving employees over 48 hours of PTO.

Laura Keating
Office Manager
Civic League Day Nursery
507-282-5368

From: Lisa Tepley
To: RULES, DLI (DLI)
Subject: MN ESST Proposed Rules
Date: Monday, July 22, 2024 3:20:46 PM
Attachments: Outlook-f25yafnt.png

Good afternoon,

I read the notice that the state may work on creating rules employers will need to follow in managing ESST. I'm curious whether there will be any collaboration with a diverse group of employers to help you all consider some real-life scenarios, as well as cause and effect of different rules being considered?

The law as it currently stands definitely has some challenges, even though it was well intended. Making a standard set of rules may be helpful, or may end up being problematic. It would be great to have a focus group of employers, and possibly workers too, to help shape future changes, especially if they will be requirements.

It also may be beneficial to explore whether there is a way to combine ESST with the impending paid leave law. There are so many similarities as far as what the time can be used for, and it may make it easier for workers to understand and employers to administer.

Lisa Tepley | Benefits Manager
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From: ~AEROSPACE Regulatory Comments - Benefits
To: RULES, DLI (DLI)
Subject: Comments for possible rules governing Minnesota Earned Sick and Safe Time
Date: Friday, September 6, 2024 7:30:36 AM

Thank you for the opportunity to submit comments regarding the possible adoption of rules governing Earned Sick and Safe Time (ESST).

The adoption of rules would establish greater clarification on aspects of the law for both employees and employers. If the Department of Labor and Industry elects to adopt rules, clarity would be appreciated on the following section of the law:

226.3 Subdivision 1

No Effect on more generous sick and safe time policies. (a) Nothing in sections 181.9445 to 181.9448 shall be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements provided in sections 181.9445 to 181.9448. ***All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446.***

Regarding the language involving paid time off which exceeds legal requirements, the Department should explore the potential of adopting rules to narrow this provision, so it applies only to the buckets of time being used to comply with the law. For example, if an employer elects to be more generous and provides a frontloaded 160 hour bucket of paid sick leave (to be used for ESST purposes), the entire 160 hours would be required to meet or exceed the minimum standards provided in the law. However, additional separate buckets of time designated for things like vacation or personal time (not required by law) would not be subject to ESST requirements.

Alternatively, since many employers provide multiple buckets of paid time off and may naturally allow employees to use vacation or personal days for illness/injury when ESST leave is exhausted, the rules could clarify that the provision does not extend to use increment requirements. Employers may have differing use increment requirements for the various buckets of time provided to employees. The current language seems to imply that an employer who provides vacation time in full day increments would need to modify its policy to meet ESST use increment requirements. The Department should consider adopting a rule which clarifies that employers may set use increment policies for buckets of time that are provided separately and in addition to ESST.

Thank you

Nicole Blissenbach
Commissioner
Department of Labor and Industry

September 6, 2024

Krystle Conley
Rulemaking Coordinator
Office of General Counsel
Department of Labor and Industry

Delivered electronically to: dli.rules@state.mn.us

Re: Request for Comments for Possible Rules Governing Earned Sick and Safe Time

Dear Commissioner Blissenbach, Ms. Conley and other interested parties,

Thank you for the opportunity to comment on the rules governing the Earned Sick and Safe Time (ESST) requirements as the Department is considering rules that would carry out the ESST law in Minnesota.

North Memorial Health is a large employer with over 6,500 employees, including employees across the employment spectrum from medical providers, various healthcare practitioners and technicians, administrators, food and environmental services, among others. We also have several collective bargaining units across our employee population. We have generous paid time away benefits as the market demands to remain a competitive employer of choice. In addition, we are committed to full compliance the ESST law and support the important paid time away protections it affords employees. While we recognize the Department has limitations on their implementation of the ESST law, there are a number of challenges and consequences that will result from the Department's rule making process. We would like to highlight a few of the challenges in implementing the current interpretation of the ESST law.

Employee Dissatisfier. Requiring all paid time off (PTO) that can be used for absences due to personal illness or injury to meet the same ESST requirements will force employers to revert back to old practices of separating vacation and sick leave banks rather than one flexible bank of PTO. Team members have become accustomed to having flexibility with their entire accrued PTO bank and value this flexibility as an important employee benefit. If all PTO for illness or injury must comply with ESST requirements, employers with complex scheduling and critical service delivery demands like patient care, like 24/7 hospitals, will be forced to separate PTO into two separate banks of vacation and sick time in order to maintain some certainty in shift staffing. We believe this will be very disappointing for employees.

Patient Care and Administrative Challenges.

- Attendance policy enforcement and unexpected absences. Expanding the ESST protections to *all* PTO for illness or injury increases the challenges to enforce attendance policies. In the healthcare industry, this introduces additional challenges in predictability, ensuring shifts are filled, and puts additional pressure on peer providers and practitioners to pick up shifts on little or no notice during absences. Last minute absences are extremely disruptive in the healthcare industry and can compromise patient care.
- ESST Documentation. Minimal documentation requirements from team members utilizing ESST leave creates additional challenges in understanding their leave needs and backfilling staff on

shifts. With no documentation required until after the third consecutive day of leave and the ability for team members to provide their own written documentation leaves little protection and predictability for employers. This is particularly challenging in patient care roles.

- Bargaining Unit Interaction. We have several collective bargaining units throughout our system that specifically address benefits, including paid time off. The ESST law and rules introduce additional complexities to the previously negotiated collective bargaining agreements.

Thanks, again, for the opportunity to comment prior to the release of the rule making at the Department of Labor and Industry. While we appreciate the state and Department providing direction on the ESST law, there are significant complexities, employee morale, and patient care concerns associated with an employer being required to apply *all* ESST rules to *all* PTO that can be used for illness or injury. (We note that under the vast majority of PTO policies, all PTO can be used for illness or injury thus resulting in the ESST rules applying to the entire allotment of PTO).

Our ultimate goal and mission is to continue to have the staffing and care resources available to meet our communities' healthcare needs. Rules that will make ESST more complex to implement, particularly for an industry to provides a critical service to the community, could create new challenges to provide critical patient care services in light of the extensive workforce challenges that currently exist in the healthcare industry.

Sincerely,

Shannon Sloan
Chief Human Resources Officer

From:	Bette Zerwas
To:	RULES, DLI (DLI)
Cc:	Shannon Sloan
Subject:	Response: Request for Comment ESST Rule Making
Date:	Friday, September 6, 2024 11:13:46 AM
Attachments:	Outlook-5clwjvq5.png North Memorial Comments on ESST Rule Making Sept 2024.pdf

Hello –

Please find attached our response to the open comment period for possible rules on the Earned Sick and Safe Time Regulations.

Please confirm receipt and let us know if you have any additional questions.

Thanks!
Bette

Bette Zerwas, MPH
Director, Public Policy
Cell: (763) 464-5172
northmemorial.com

CUMMINS & CUMMINS

September 5, 2024

VIA E-MAIL AND U.S. MAIL
dli.rules@state.mn.us

Ms. Krystle Conley
Rulemaking Coordinator
Office of General Counsel
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, MN 55155

Re: Rule-Making for Minnesota Earned Sick and Safe Time Law
Our File No.: 46.000

Dear Ms. Conley:

I represent the Minnesota State Building and Construction Trades Council, which is the advocate voice for seventy thousand unionized construction workers throughout Minnesota. I am writing on behalf of my client to submit comments and request the adoption of Rules under the Minnesota Earned Sick and Safe Time ("ESST") Law, Minn. Stat. §§ 181.9445 to 181.9448, to fulfill the purposes of the statute and clarify multiple interpretive issues that have caused numerous disputes among employers and unions. Pursuant to its statutory authority under Minn. Stat. § 177.50, subd. 6, the Minnesota Department of Labor and Industry ("Department") should adopt Rules to clarify the issues described below.

1. **Whether the collective bargaining agreement ("CBA") waiver in Minn. Stat. § 181.9448, subd. 1(f) only applies to construction workers**. Many employers, including public employers, manufacturers, suppliers, and service contractors, have taken the position that they can take advantage of a construction CBA waiver regardless of whether the affected employees perform construction work (a) if the union representing the employees also represents construction workers and/or (b) if the employer also performs construction work or is a supplier in the construction industry. The Department should promulgate a Rule rejecting these misinterpretations of the statute, which only authorizes CBA waivers covering "the affected building and construction industry employees." The Rule should clarify that the construction CBA waiver only applies to employees who are construction workers. The Legislature included the waiver provision in the statute in light of the short-term, project-based employment patterns of construction workers, which can make paid leave difficult to administer for them in many circumstances. The

intent of the waiver provision was to allow for the parties to bargain for alternatives to statutory paid leave for construction workers, not to give employers a free pass regarding ESST when they happen to bargain with a construction union, perform some construction work using other employees, or provide supplies in the construction industry. As a related matter, the Department should clarify what constitutes "construction" using the same definition that applies under the Paid Family and Medical Leave Act, Minn. Stat. § 268B.01, subd. 14.

2. **Whether taxable payments like hourly vacation fund contributions or hourly contributions to mandatory savings accounts under a CBA and amounts deducted for union dues are included in the "base rate" for purposes of Minn. Stat. § 181.9445, subds. 4 and 4a**. Some employers have taken the position that the "base rate" under the ESST Law only includes wages and does not include other taxable hourly payments that are typical in the unionized construction industry, such as hourly contributions to vacation funds and mandatory savings accounts. However, such hourly contributions are treated as wages for tax purposes at the time they are earned and should thus be considered part of the base rate of pay rather than as separate "fringe benefits." *See generally Auren v. Belair Builders*, No. A05-606, 2006 WL 771394 (Mn. Ct. App. 2006). Similarly, amounts deducted by the Employer from the employee's wages and transmitted to the Union as "working dues" should be treated as part of the employee's "base rate" under the ESST Law and should not be used to reduce the employee's base rate. For these reasons, the Department should adopt a Rule clarifying that taxable hourly contributions and amounts transmitted by the employer for union dues are part of the employee's "base rate" under Minn. Stat. § 181.9445, subds. 4 and 4a.

3. **Whether employers are required to continue making hourly contributions to Health and Welfare Funds while employees are using ESST**. Some employers have argued that they are not required to continue to make hourly health insurance contributions while an employee is using ESST as long as the employee's coverage does not lapse. This contradicts Minn. Stat. § 181.9447, subd. 7(a), which provides that "the employer must maintain coverage under any group insurance policy, group subscriber contract, or health care plan for the employee and any dependents, as if the employee was not using earned sick and safe time." The intent of this statutory provision is to continue health insurance benefits as though the employee had not used ESST, not to allow the Employer to cease health plan contributions because of use of ESST. Accordingly, the Department should promulgate a Rule clarifying that employers must continue to make hourly health and welfare plan contributions during an employee's use of ESST as though the employee had not used ESST.

4. **Whether employers must continue making other hourly fringe benefits contributions during the use of ESST when required to do so by a CBA**. Many employers have argued that they are not required to make fringe benefits contributions while an employee is using ESST because the employer is only obligated to pay the "base rate"—even though a CBA independently requires such contributions. This contradicts Minn. Stat. § 181.9447, subd. 7(b), which provides that "nothing under this section prevents the accrual of benefits or seniority during the leave pursuant to a collective

bargaining or other agreement between the employer and employees." For example, many CBAs require employers to make fringe benefits contributions for all "hours paid" to the employee, not just hours worked. The ESST Law does not override these provisions. Thus, the Department should adopt a Rule clarifying that the ESST statute does not supersede an employer's obligation to continue making fringe benefits contributions under a CBA during the use of ESST.

5. **Whether employers may unilaterally apply collectively bargained vacation benefits to satisfy their obligation to provide ESST**. Minnesota's ESST law makes clear that it must never be interpreted or applied "to diminish the obligation of an employer to comply with any . . . collective bargaining agreement . . . that does not otherwise conflict with the minimum standards and requirements [under the law]." Minn. Stat. § 181.9448, subd. 1(b). Nonetheless, many employers are doing precisely what this provision of Minnesota's ESST Law prohibits. In particular, these employers are unilaterally reducing vacation benefits guaranteed to bargaining unit employees under the applicable CBA to satisfy the employers' independent obligation under Minnesota's ESST Law to provide separate paid sick and safe time. Under Minn. Stat. § 181.9448, Subd. 1(b), employers are not permitted to reduce collectively bargained vacation time to satisfy the employer's obligation to provide ESST under the statute.

   Employers that are diminishing collectively bargained vacation time to provide ESST typically and erroneously rely on the Department's current guidance. This guidance says that an employer's paid time off ("PTO") policy may be used to satisfy the employer's obligations under Minnesota's ESST Law pursuant to Minn. Stat. § 181.9448, subd. 1(e). Stating what should be obvious, vacation rights under a CBA – which are collectively bargained and guaranteed by execution of a CBA and remain in effect throughout the life of the CBA – are fundamentally different as a matter of law from Employer PTO policy benefits – which an employer establishes, modifies, and rescinds unilaterally at its discretion. Accordingly, the Department should promulgate a Rule making clear that the paid sick and safe time required by Minnesota's ESST law must be provided in addition to—and independent of—any vacation benefits guaranteed under a CBA.

6. **Whether the applicable statute of limitations should be tolled pending pursuit of the grievance and arbitration procedure under a CBA**. Given that many employers are now violating Minnesota's ESST Law in ways that also violate a CBA, the Department also should promulgate a Rule making clear that the limitations period for filing claims with the Department and/or in court under Minnesota's ESST Law shall be tolled for the duration of the grievance and arbitration procedure. This Rule is essential because the Department has informally implemented an "exhaustion of remedies" policy or practice requiring unions to arbitrate any CBA issues before the agency will investigate. If an arbitration award does not fully or appropriately address the violations of Minnesota's ESST Law that are presented, employees' claims under Minnesota's ESST law will be unfairly prejudiced by the Department's directive to arbitrate first because the duration of the grievance procedure may last longer than the limitations period for filing claims under Minnesota's ESST law.

In conclusion, Department Rule-Making clarifying the parties' obligations regarding the above-described issues will reduce the need for costly and time-consuming agency investigations, court cases, and/or arbitration of disputes for both employers and unions. The affiliated unions of the Minnesota State Building and Construction Trades Council have already expended substantial resources attempting to resolve disputes arising from the interpretive issues described above. In addition, Rule-Making will lead to the fair and uniform application of the law rather than a wide variety of competing interpretations developed by numerous parties and arbitrators.

If you have any questions about the above or want more information, please advise. Thank you for your consideration.

Sincerely,

CUMMINS & CUMMINS, LLP

/s/Brendan D. Cummins

Brendan D. Cummins

c: Tom Dicklich, Executive Director
Dan McConnell, President
Minnesota State Building and Construction Trades Council

From:	Brendan Cummins
To:	RULES, DLI (DLI)
Cc:	Tom Dicklich; Dan McConnell
Subject:	Rule-Making for Minnesota Earned Sick and Safe Time Law
Date:	Thursday, September 5, 2024 6:31:20 PM
Attachments:	image001.png Conley, Krystle (ESST Rule-Making).pdf

Ms. Conley:

Please see the attached comments regarding possible rule-making for the Minnesota Earned Sick and Safe Time Law on behalf of the Minnesota State Building and Construction Trades Council. Thanks.

--Brendan Cummins

MSBA Board Certified Labor & Employment Law Specialist

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Essentia Health

Executive Offices
502 East 2nd Street
Duluth, MN 55805
EssentiaHealth.org

September 6, 2024

Krystle Conley, rulemaking coordinator, Office of General Counsel
Minnesota Department of Labor and Industry
Email: dli.rules@state.mn.us
Phone: 651-284-5006

Re: Earned Sick and Safe Time, Minnesota Rules, part 5200.1200
Submitted via Email: dli.rules@state.mn.us

Dear Coordinator Conley:

On behalf of Essentia Health, we appreciate the opportunity to comment on the Minnesota Department of Labor and Industry's ("MN-DLI") possible adoption of a new part of Minnesota Rules, chapter 5200, for rules governing earned sick and safe time ("ESST").

First and foremost, Essentia wishes to express its full support of the legislature's intent behind ESST, which ensures all workers have the option to take time off to care for themselves and loved ones without financial burden. Our comments in this letter are directed toward the operational challenges and possible impact to patient care that may come with the 2024 ESST amendments, particularly the amendment that effectively converts all paid time off ("PTO") offered to employees into protected ESST.

I. Overview of Essentia Health

Essentia Health is headquartered in Duluth, Minnesota, and combines the strengths and talents of 15,000 employees, including 2,200 physicians and advanced practitioners, who serve our patients and communities through the mission of being called to make a healthy difference in people's lives. The organization lives out this mission with a patient-centered focus at 14 hospitals, 78 clinics, 6 long-term care facilities, 6 assisted and independent living facilities, 7 ambulance services, 27 retail pharmacies, and a rural health research institute.

II. DLI's Interpretation of ESST's 2024 Amendments Will Significantly Impact Healthcare Operations and Patient Care

Prior to the 2024 amendments, employers that had more generous PTO policies were not required to comply with the ESST statute for leave that was more than the 48 (or 80 hours) minimum. Now, the legislature has taken a different approach.

MN-DLI has taken the position that "[i]f an employer provides employees with paid time off (PTO) or other paid leave 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." See MN-DLI FAQs, available at https://dli.mn.gov/sick-leave-changes (last visited Sept. 5, 2024). MN-DLI has also made clear that if additional PTO is made available to an employee "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." Id. This interpretation is concerning to Essentia Health.

A. MN-DLI's Interpretation Could Result in Inadequate and Unpredictable Staffing Levels, Which May Negatively Impact Patient Care

Essentia is concerned that MN-DLI's interpretation of ESST's 2024 amendments will require all PTO to be used for any reason covered by the ESST statute. This could result in inadequate and unpredictable staffing levels at our clinics, hospitals and care centers, which could negatively impact the quality of patient care, patient outcomes, and hospital costs.

Essentia provides generous and comprehensive PTO programs to its colleagues. The amount of PTO hours offered to colleagues varies based on a number of factors such as length of employment and job position, but in some instances, colleagues could carry a balance of up to 350 hours of PTO at any given time. Under each Essentia PTO plan, however, vacations and personal leave-time unrelated to an ESST-qualifying reason must be requested and approved in advance. The reason for this requirement is simple: Essentia needs a certain number of staff physically present at its facilities to care for its patients. Adequate staffing levels ensure that our community members (several of whom are in rural areas) receive the best care possible at convenient locations.

Now, under MN-DLI's interpretation of the 2024 ESST amendments, Essentia will be hindered in its ability to effectively manage staffing levels. Oftentimes, the need for ESST is unforeseeable. In those situations, employees must only provide notice "as soon as practicable." If all PTO hours are protected by ESST's notice requirements, employees could be absent (in Essentia's case) up to 350 hours and provide minimal notice of their absence. More often than not, Essentia's leaders will be left to scramble to find replacement workers to ensure adequate patient coverage. In a worst-case scenario, facilities may need to close due to lack of adequate staffing.

Moreover, the 2024 amendments make it extremely difficult to hold employees accountable for unpredictable, missed work as employees can claim that any absence is protected by ESST without substantiation. Under the statute, Essentia is unable to request documentation until three consecutive scheduled workdays have passed, and the documentation provided need only be a written statement indicating the employee took time off for an ESST qualifying purpose. ESST's anti-retaliation requirements also prohibit Essentia Health from disciplining an employee who claims they were absent for an ESST-qualifying event. If every PTO hour is afforded this kind of protection the result will be devastating to any employer's operations, particularly an employer like Essentia that voluntarily provides its employees with PTO well in excess of what ESST requires.

B. Loss of Employee Benefits Due to Bifurcation of "Sick" and "Vacation" Time.

MN-DLI's interpretation of the 2024 amendments may result in a decrease of employee benefits. In order to ensure adequate staffing, Essentia could be faced with the difficult decision to reduce PTO hours offered. Even if Essentia were to bifurcate their "sick" and "vacation" PTO hours, as many employers are being advised to do, this would also result in a negative impact to our colleagues.

Essentia's PTO plan is currently designed to be as flexible as possible for our colleagues' personal circumstances. That flexibility goes away if Essentia bifurcates its PTO hours. For example, colleagues who do not often use sick time may lose up to 80 hours of what would otherwise be used for vacation. Likewise, colleagues who are often sick or whose families have medical issues may be limited to only 80 hours per year of ESST, whereas under Essentia's current PTO program they could be eligible to use up to 350 hours.

Essentia's current approach of allowing PTO without differentiation allows for flexibility for an individual employee's personal needs and circumstances. That flexibility is at risk with MN-DLI's interpretation of the 2024 amendments.

C. The Current Effective Date Does Not Allow for Sufficient Time to Bargain with Unions

The January 1, 2025, implementation date is impracticable, particularly given the number of unionized employees and collective bargaining agreements Essentia Health manages. Essentia Health currently has 47 unique collective bargaining agreements with 8 different unions and is currently negotiating 7 additional contracts, covering over 6,000 Minnesota-based employees. As noted above, the 2024 amendments may result in the need for Essentia to completely redesign its PTO programs. Essentia Health will be required to notify and negotiate new contract terms as a result of the changes to ESST. A January 1, 2025, effective date does not allow for enough time to engage in meaningful negotiations with the unions.

III. Essentia Health Requests MN-DLI Interpret the 2024 Amendments Narrowly

Essentia Health has long recognized the importance of PTO for illness, injury, and vacation time. However, the 2024 ESST amendments will result in significant administrative burden, including, potentially, a complete redesign of our PTO program, significant changes to administration and tracking efforts, negotiations with unions, and negative employee relations.

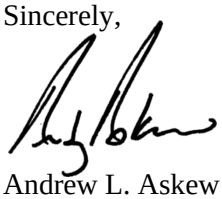
As a result, Essentia first requests that MN-DLI interpret the 2024 amendments narrowly. The amended statute provides that "[a]ll paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work **due to personal illness or injury**… must meet or exceed the minimum standards and requirements provided in sections 181.9445 [which includes the statutory ESST definitions and the statutory mandated use of ESST] …" except for the accrual rates under the ESST statute. (Minn. Stat. § subd. 1, amended by Ch. 127, Art. 11, sec. 15) (emphasis added).

A narrow interpretation of the statute's plain language would result in employers only being required to "protect" additional PTO for an employee's own "personal illness or injury" rather than the expansion of taking PTO for any ESST qualifying reason, such as a family member's illness or injury or bereavement leave. By limiting the use of additional PTO (beyond ESST's minimum hour requirements) for just the employee's own "illness or injury," Essentia will be able to better manage employee scheduling and may be able to avoid the redesign of its PTO programs.

IV. Conclusion

On behalf of Essentia Health, we appreciate the opportunity to provide input on the recent changes to Earned Sick and Safe Time and MN-DLI's interpretation of their impact. We appreciate efforts to advance sick and safe time for all working Minnesotans but are very concerned about recent changes that will significantly impact our ability to have predictable staffing levels for our patients.
Please feel free to contact me with any questions.

Sincerely,



Andrew L. Askew
Vice President of Public Policy

From: Melin, Carly
To: RULES, DLI (DLI)
Cc: Askew, Andrew
Subject: Earned sick and safe time, Minnesota Rules, part 5200.1200
Date: Friday, September 6, 2024 2:45:23 PM
Attachments: ESST Comment Letter 09.06.24.pdf

Ms. Conley-

Please see attached comment letter on behalf of Essentia Health regarding rulemaking docket 5200, earned sick and safe time. Please let me know should you need anything else. Thank you!

Carly C. Melin, J.D.
Director of Government Relations
Essentia Health
P: 218-969-5091
carly.melin@essentiahealth.org

INTERNATIONAL UNION OF OPERATING ENGINEERS

LOCAL NO. 49, 49A, 49B, 49C, 49D, 49E, 49L
MINNESOTA • NORTH DAKOTA • SOUTH DAKOTA

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September 6, 2024

Attn: Krystle Conley
Rule Making Coordinator, Office of General Counsel
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155
dli.rules@state.mn.us

Re: Comments for Possible Adoption of Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley:

The International Union of Operating Engineers, Local 49 ("Local 49") submits the following comments on the possible adoption of a new part of Minnesota Rules, chapter 5200, for rules governing Earned Sick and Safe Time ("ESST").

Local 49 is a trade union that is the exclusive representative of over 15,000 members working in the construction industry in both the public and private sectors. Local 49 has numerous collective bargaining agreements with employers that govern the terms and conditions of employees in Minnesota.

Local 49 supports the adoption of rules governing ESST.

Since the ESST law came into effect, Local 49 has encountered disputes with employers regarding compliance with the ESST law. These disputes have included, (1) employers unilaterally applying collectively bargained vacation time to satisfy the employer's obligation under the ESST law, and (2) employers unilaterally cross designating the first forty-eight (48) or eighty (80) hours of collectively bargained vacation/sick/PTO (or any combination thereof) used by employees as ESST without the request of – or approval by – employees for such cross designation to occur. *For example, an employee that has 120 hours of accrued vacation time and uses 48 or 80 hours for a non-ESST qualifying trip in January will be required to have those first 48 or 80 hours also designated as ESST by the employer, and consequentially will no longer have ESST available for the remainder of the year. Alternatively, an employee that has 120 hours of accrued sick leave that uses 48 or 80 hours will be required to have those first 48 or 80 hours also designated as ESST by*

the employer – even if the employee does not wish to use ESST – and consequentially will no longer have ESST available for the remainder of the year.

These disputes have resulted in the filing of grievances on behalf of affected employees with the possibility of arbitration, unless the dispute is resolved through the grievance process.

Local 49 requests that rules be adopted that clarify and guide on:

1. Whether employers can unilaterally apply collectively bargained vacation time to satisfy the requirements of the ESST law?

   Employers cannot unilaterally impose or misclassify vacation as ESST because there is an ESST statutory provision stating as much. Minn. Stat. § 181.9448, subd. 1(b) directs that, "*[n]othing in sections 181.9445 to 181.9448 shall be construed to limit the right of parties to a collective bargaining agreement to bargain and agree with respect to earned sick and safe time policies or to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements provided in this section*."

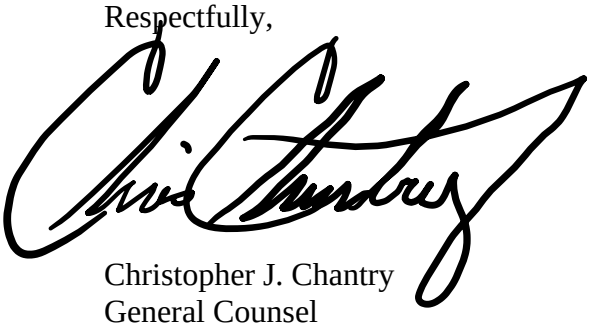
2. Whether employers can unilaterally cross designate the first forty-eight (48) or eighty (80) hours of collectively bargained vacation/sick/PTO time used by employees as ESST without the request of, or approval of, the employee?

   Employers cannot require an employee to use ESST. *See FAQS: Earned Sick and Safe Time (ESST)*, Minnesota Department of Labor and Industry, https://www.dli.mn.gov/sick-leave-FAQs (last visited September 4, 2024).

Lastly, as an aside, Local 49 would like to comment on the waiver provision contained in the ESST law for building and construction industry employees represented by a construction trades labor organization. *See* Minn. Stat. 181.9448, subd. 1(f). Continued maintenance of this waiver in the ESST law is critical as it has allowed construction trades unions like Local 49 to bargain for different structured benefits that have been more beneficial for those employees covered by the waiver while also working better for certain industries Local 49's members work in.

Thank you for the opportunity to provide comments. I can be reached directly at 612-900-5651 or cjchantry@local49.org.

Respectfully,



Christopher J. Chantry
General Counsel

From: Chris Chantry
To: RULES, DLI (DLI)
Subject: Comments on Possible Adoption of Rules Governing Earned Sick and Safe Time
Date: Friday, September 6, 2024 8:45:57 AM
Attachments: Outlook-A picture
ESST Rulemaking Comments MNDLI 9.6.2024.pdf

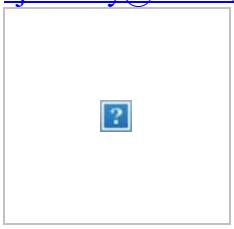
Please see the attached comments on Possible Adoption of Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877.

Please let me know if there is any issue with the attachment or if there is anything else required for the comments.

Thank you,

Chris

Christopher J. Chantry
General Counsel
International Union of Operating Engineers, Local 49
2829 Anthony Lane South
Minneapolis, MN 55418
Cell: 612-900-5651 | Direct: 612-788-9441
cjchantry@local49.org



Minnesota Hospital Association

161 Rondo Ave., Ste. 915
Saint Paul, MN 55103-3454
www.mnhospitals.org

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Department of Labor and Industry
443 Lafayette Road N.
St. Paul, MN 55155

September 6, 2024

Re: Comments for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200

Dear Ms. Conley,

On behalf of the Minnesota Hospital Association (MHA), please accept the following comments as the Department of Labor and Industry (the "Department") considers drafting rules that would carry out the Earned Sick and Safe Time (ESST) law in Minnesota pursuant to Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448.

We strongly encourage the Department to draft rules specifically regarding changes made to Minnesota Statute, section 181.9448, subd. 1 as amended by Chapter 127, Article 11, Section 15 during the 2024 legislative session. Effective January 1, 2025, the law now requires that if an employer provides employees with paid time off (PTO) or other paid leave that is more than the amount required under ESST for absences due to personal illness or injury, the additional PTO must meet the same requirements as ESST, other than the ESST accrual requirements. This legislative change received no public hearings where testimony was allowed, it was not included in any legislation other than the fourth and final engrossment of HF 5247 (Chapter 127) posted on May 20, 2024 – the final day of the legislative session – and it inserts a considerable amount of uncertainty into PTO policy and process.

Minnesota's nonprofit hospitals and health systems provide competitive and generous benefits that are critical to the recruitment and retention of the state's important health care workforce. Such benefits include customized PTO plans that fit each hospital and their employees' needs, including but not limited to paid leave for personal needs and illness. Additionally, many hospitals provide PTO and other time-off benefits as negotiated in collective bargaining agreements (CBA).

The legislative changes made to Minn. Stat. 181.9448, subd. 1 during the 2024 session bluntly apply ESST requirements to all PTO benefits and subsequently fail to contemplate the impacts of the one-size-fits all approach on employees and the PTO policies that their employers have planned and budgeted across Minnesota's hospitals and health systems. More clarity is needed, and we urge the Department to provide precision in rulemaking on the following to strike a balance between the newly amended law and hospital and health system PTO benefits:

- **Benefit vs. non-benefit eligible employee PTO allocations and ESST accrual**. Many hospitals and health systems provide upfront allocations of PTO for benefit eligible employees at the beginning of the year. Benefit eligible employees often transition to ineligible status impacting their PTO and subsequently now their ESST. It is unclear how such a transition between eligible and non-eligible status should be handled and as such we ask the Department to clarify via rulemaking.
- **PTO Carryover**. Hospitals and health systems across the state structure varying options for PTO carryover and/or payout on an annual basis for their benefit eligible employees. Rule is needed to

clarify how the changes made applying ESST to PTO interplay with existing and planned PTO accrual and carryover plans.

- **ESST Requirements and PTO Attendance Policies**. Employee work-life balance is an ideal that Minnesota's hospitals and health systems strive for using benefits such as PTO. Attendance policies are used to ensure that a hospital can properly provide care to patients without jeopardizing access to emergency services, acute care, and even disaster response. As such, we ask the Department to draft rules that more clearly engage hospital responsibility to provide critical emergency services and the use of attendance policies with ESST requirements.
- **ESST PTO Requirements and CBA/Labor Union Agreements**. Hospitals and health systems need more clarity as soon as possible from the Department on how changes to ESST interact with CBAs and labor agreements related to PTO, including but not limited to the three bullets listed above. CBAs are an important element to Minnesota's health care workforce and all additional clarity from the Department is requested in rule as soon as possible.

Minnesota's hospitals and health systems are dedicated to supporting their employees and to providing them with benefits that enrich their lives, support their careers and help them grow their communities – all while serving patients 24 hours a day, 7 days a week, 365 days a year. Success in accomplishing this requires dutifully maintained balance amidst many challenges and pressures. Such balance is crucial and the recent legislative changes to ESST – enacted without any public hearing where testimony could be taken – negatively impact it.

We urge the Department to provide precision in rulemaking as soon as possible to strike a balance between the newly amended law and hospital and health system PTO benefits.

Please reach out if you have any questions or would like to discuss anything further related to the ESST draft rulemaking process. Thank you for your consideration.

Sincerely,

Mary Krinkie
Vice President of Government Relations
mkrinkie@mnhospitals.org

Danny Ackert
Director of State Government Relations
dackert@mnhospitals.org

From:	Danny Ackert
To:	RULES, DLI (DLI)
Cc:	Mary Krinkie
Subject:	MHA Comment ESST MN Rules Part 5200.1200
Date:	Friday, September 6, 2024 3:51:54 PM
Attachments:	Outlook-iryqo44n.png MHA Comment_ESST MN Rules Part 5200.1200_9.6.2024.pdf
Importance:	High

Dear Ms. Conley,

On behalf of the Minnesota Hospital Association (MHA), please accept the attached comments as the Department of Labor and Industry considers drafting rules that would carry out the Earned Sick and Safe Time (ESST) law in Minnesota pursuant to Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448.

Please confirm reciept and please let me know if you have any questions. Thank you.

Danny

Danny Ackert, MPH
Director of State Government Relations
Minnesota Hospital Association
Capitol Ridge Building, 161 Rondo Ave Ste 915, Saint Paul, MN 55103
c: 616-901-7500
www.mnhospitals.org

I am providing comments regarding the Minnesota Sick and Safe Time (ESST) regulations on behalf of Polar Semiconductor, LLC.

Polar Semiconductor, LLC (Polar) is one of the largest semiconductor companies in the United States and the biggest in Minnesota. We employ 550 employees and manufacture 24/7/365. Polar has signed a non-binding preliminary memorandum of terms with the Department of Commerce, under which it will receive $120 million in proposed direct funding as part of the U.S. CHIPS and Science Act, and a $75 million investment from the State of Minnesota.

Prior to the Minnesota ESST regulations, Polar already provided an ample paid time off (PTO) plan to employees. When recently comparing our company's PTO plan against benchmark data, Polar provides an extra week of time off per year to employees. And, prior to the Minnesota ESST regulations, employees had a consistent process of requesting all time off which would be approved or denied under consistent departmental handling based on company needs. If employees did need unexpected time off, then points were applied but the company factored in a reasonable number of allowable unexpected absences before disciplinary action. In cases such as medical/pregnancy accommodation, disability, FMLA, etc., attendance points were always waived. Having an attendance policy helped to reduce absenteeism and tardiness and created formalized and consistent attendance expectations for employees.

As Polar expands its manufacturing into new markets, it will be necessary to reliably staff our manufacturing area and provide continual coverage on all semiconductor tools. The ESST regulations have brought some challenges to this necessary tool coverage with an increase in unexpected absences. Employees can now have excessive unexpected absences with no ramifications. Those challenges, along with some recommendations, can be found below.

CHALLENGE #1: Employees are using ESST to waive attendance points for consistently arriving late to work.

Current regulations:

Increment of time used

- The ESST law change establishes that employees may use ESST in the same increment of time for which they are paid. Employers are not required to allow ESST use in less than 15-minute increments and cannot require use in more than four-hour increments.

Can an employer require an employee to provide notice to use ESST leave?

- An employer may require notice of up to seven days in advance when the need to use ESST is foreseeable. If the need is unforeseeable, an employer may require notice as soon as practicable. If an employer requires notice, it must have a written policy regarding notice procedures and must provide a written copy of the policy to employees; if the policy is not provided to employees, then an employer cannot deny use of ESST to an employee on the grounds that the employee did not follow the notice policy.

Can employers require documentation from employees after they use ESST for more than three consecutive calendar days or more than three consecutive work days?

- Employers may require documentation if an employee misses more than three consecutive scheduled workdays.

Can an employer require an employee to provide documentation to use ESST leave?

- An employer may require an employee to provide reasonable documentation of ESST use only when more than three consecutive scheduled workdays of ESST are used. If the employee is unable to secure the requested documentation, in most cases the employee may supply the employer with a written statement indicating the employee is using or used ESST for a qualifying purpose. The written statement may be written in the employee's first language and does not need to be notarized or in any particular format.

Affect on employers:

Employees are requesting ESST when consistently arriving late for work so they don't get an attendance point. With the 15 minute increment allowed and based on our shift schedules, an employee could be late for work every day of the year and not be held accountable. The regulations state that we could request documentation but an employee could simply write on a piece of paper "I have headaches every morning". There is this sentence from above "If the employee is unable to secure the requested documentation, **in most cases** the employee may supply the employer with a written statement…", but what does **in most cases** mean? Additionally, there is nothing in the regulations regarding what an employer can do if there is suspected abuse.

RECOMMENDATIONS:

- ✓ Increase the 15 minute increment to either two hours or four hours.
  - When reviewing other states' ESST regulations (included at the end of this letter), two hours seems closer to benchmark.
  - The Minnesota cities of Bloomington and Duluth indicate four hours. Although we are located in Bloomington, we have to apply the most favorable ESST regulations.
  - Increasing the minimum increment would reduce the number of instances during the year when an employee could use ESST.
- ✓ Clarify what "in most cases" means in the above statement related to documentation.
- ✓ Provide clear guidance to employers regarding what can be done in suspected cases of abuse where employees are not using ESST hours in the spirit of ESST.
  - For example, Bloomington has this in their regulations: *It is not retaliation for an Employer to investigate an Employee's suspected abuse of ESST (such as using ESST for vacation leave, rather than as sick or safe time). This investigation should not interfere with the Employee's ability to use ESST.*
  - While the language above is helpful, it seems there should be even clearer language for Minnesota ESST regarding: examples of what constitutes abuse, what investigative process the employer should follow, what formal documentation the

employee would be required to provide, and what the ramifications to the employee would be in the case of found abuse.

CHALLENGE #2: Under the recent updates to ESST, the regulations state that if we allow employees to use their separate Personal Days Off time off plan for any reason (including sick time *above and beyond* what's provided under the MN Sick and Safe time off plan), we must also follow ESST requirements for those hours.

Current regulations:

ESST application to other paid time off – effective 1/1/25

- If an employer provides employees with paid time off (PTO) or other paid leave 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.

Can an employee's use of ESST be counted against them in relation to an employer's attendance policy or point system?

Employers cannot have policies or practices that adversely impact employees specifically for using ESST. Employers who are unsure if their policies or practices violate the ESST law's retaliation prohibition may want to seek the assistance of an employment law attorney for further guidance.

Affect on employers:

These updates to the regulations make it impossible for an employer to have any type of attendance policy for its employees. If all paid time off hours need to be treated as ESST, then employers cannot apply attendance points for any situation.

RECOMMENDATIONS:

- ✓ Do **NOT** have this go into effect on 1/1/25 for employers that have a standalone MN ESST time off plan.

Thank you in advance for reviewing these recommendations and taking them into consideration. While we certainly want to continue to allow employees to have time off for items related to sick and safe reasons (which we were doing before ESST went into effect), there must be some additional ESST guardrails put in place to prevent abuse. Looking ahead to 2026 and Minnesota Paid Leave, it will become even more challenging to try and ensure consistent tool coverage. We hope that regulators fully appreciate how complex and administratively burdensome it is becoming to operate a business when there are differing leave regulations at the city, state, and federal levels.

ACTUAL USAGE OF ESST FOR POLAR MANUFACTURING EMPLOYEES

Month of August 2024

	# of ESST requests per shift	% of employees requesting SST **per shift**
M	5.3	11%
N	4.6	9%
O	3.8	8%
P	6.0	12%

Percent of ESST requests by minutes/hours

Less than 15 minutes	20%
Less than 1 hour	47%
Less than 2 hours	64%

Note: Polar has not yet changed our ESST to a minimum usage of 15 minutes or more

MINNESOTA CITY SST & STATE SST – MINIMUM USAGE

City of Bloomington	4 hours
City of Duluth	4 hours
City of Minneapolis	smallest increment
City of Saint Paul	smallest increment
Arizona	1 hour
California	2 hours
Colorado	1 hour
Connecticut	1 hour
Illinois	2 hours
Maine	1 hour
Maryland	4 hours
Massachusetts	1 hour
Michigan	1 hour
Nevada	4 hours
New Jersey	# of hours of scheduled shift
New Mexico	smallest increment payroll allows
New York	4 hours
Oregon	1 hour
Rhode Island	4 hours
Vermont	1 hour
Washington	smallest increment payroll allows, but employer can request variance

From: Latzke, Jean
To: RULES, DLI (DLI)
Subject: Public comment - ESST
Date: Friday, September 6, 2024 1:33:19 PM
Attachments: Polar ESST comments 9.6.24.pdf

Please see attached, thank you.

Jean Latzke
Pronouns: she/her
Principal Human Resources Administrator
Polar Semiconductor, LLC
2800 East Old Shakopee Road, Bloomington, MN 55425
P: 952-876-3308 F: 952-876-1808
latzkej@polarsemi.com

From: Julia K. Corbett
To: RULES, DLI (DLI)
Subject: ESST Rulemaking Comment
Date: Thursday, July 25, 2024 11:32:00 AM
Attachments: image001.png

Hello –
I'm submitting this comment related to the rulemaking regarding the ESST.
One of the biggest issues for some of my clients is the amendment to the statute in May, 2024 that provides that more generous policies have to comply with ESST. Many employers have more generous "PTO" policies but struggle with some of the ESST provisions applying to all of it (not being able to deny the leave, only 7 days notice, not getting documentation unless they are gone 3+ consecutive shifts, using PTO for vacation immediately upon accrual rather than having a waiting period for that type of use, not requiring people to find replacements for their own shifts if they are gone for personal reasons (not ESST reasons) etc.). I think it would be helpful to clarify:

- If an employee is using the more generous policy time for vacation or personal time (not an ESST usage reason), then the ESST rules do not have to apply ; that the ESST rules apply to those more generous policies only to the extent the time is being used for an ESST usage reason.

Parking Instructions – We are located in the Profinium Place Building on the corner of Warren Street and Riverfront Drive. Park in the City Center Parking Ramp, on the first or second level, which can be accessed on Warren Street, Cherry Street, or Riverfront Drive. Parking anywhere in the ramp is free for two hours or less, even though you will have to take a ticket when going through the parking ramp gate. The parking cost for more than two hours is $3 per day. There are three buildings connected to the ramp. Our building is the only one with glass doors on the first and second levels. Enter the building through those glass doors. Once inside, take the elevator to the 4th floor.

CUMMINS & CUMMINS

August 16, 2024

VIA EMAIL AND UNITED STATES MAIL

Ms. Krystle Conley
Rulemaking Coordinator
Office of General Counsel
Minnesota Department of Labor and Industry
443 Lafayette Road North
St. Paul, MN 55155

Re: Minnesota Earned Sick and Safe Time law
Our File No.: 403.000

Dear Ms. Conley:

I write on behalf of my client, BCTGM, Local 22 ("Union"), regarding the possible adoption of Rules under Minnesota's Earned Sick and Safe Time ("ESST") law to fulfill the purposes of that statute by, inter alia, clarifying the scope of the statutory requirements to resolve numerous disputes between employers and unions across Minnesota. As briefly outlined below, and pursuant to Minn. Stat. § 177.50, Subd. 6 and Minn. Stat. §§ 181.9445, et seq., the Minnesota Department of Labor and Industry ("Department") should adopt Rules to clarify and implement the statutory the prohibition against interpreting or applying Minnesota's ESST law to reduce rights or responsibilities under any collective bargaining agreement ("CBA").

Minnesota's ESST law makes clear that it must never be interpreted or applied "to diminish the obligation of an employer to comply with any . . . collective bargaining agreement . . . that does not otherwise conflict with the minimum standards and requirements [under the law]." See Minn. Stat. § 181.9448, Subd. 1(b). Nonetheless, many employers are doing precisely what this provision of Minnesota's ESST law prohibits. In particular, these employers are unilaterally reducing vacation benefits guaranteed to bargaining unit employees under the applicable CBA to satisfy the employers' independent obligation under Minnesota's ESST law to provide separate paid sick and safe time to all employees – not solely to employees covered by the CBA. In short, and in violation of Minn. Stat. § 181.9448, Subd. 1(b), these employers are robbing Peter to pay Paul.

Employers that diminish collectively bargained and guaranteed vacation time to create and provide ESST erroneously rely on the Department's current guidance. This guidance says that an employer's paid time off ("PTO") policy may be used to satisfy the employer's

obligations under Minnesota's ESST law. Stating the obvious, vacation rights under a CBA – which are collectively bargained and guaranteed by execution of a CBA and remain in effect throughout the life of the CBA – are fundamentally different as a matter of law than Employer PTO policy items – which an employer establishes, modifies, and rescinds unilaterally at its discretion. Accordingly, the Department should promulgate a Rule making clear that the paid sick and safe time required by Minnesota's ESST law must be provided in addition to any vacation benefits guaranteed under a CBA.

Given many employers now violate Minnesota's ESST law in ways that also violate a CBA, the Department also should promulgate a Rule making clear that the limitations period for filing claims with the Department and/or in court under Minnesota's ESST law regarding a violation of that law shall be tolled for the duration of the grievance procedure concerning the employer conduct in question. This Rule is essential because the Department now directs unions to arbitrate any sick and safe time issues first. If an arbitration award does not fully or appropriately address the violations of Minnesota's ESST law presented, employees' claims under Minnesota's ESST law will be unfairly prejudiced by the Department's directive to arbitrate first because, inter alia, the duration of the grievance procedure may last longer than the limitations period for filing claims in court under Minnesota's ESST law.

Department rule-making will also reduce the need for costly and time-consuming arbitration of disputes in the first place for both employers and unions. The employer gamesmanship summarized above has required the Union to file and pursue grievances and related information requests regarding numerous employers. As of now, the Union already is preparing to do a half-dozen arbitrations to remedy clear employer violations. Stating the obvious, spending the necessary time and resources on arbitrating these cases is extremely burdensome for the Union. More to the point, putting interpretation of Minnesota's ESST law in the hands of individual arbitrators risks having varied applications of the law and, therefore, further ambiguity. In short, the arbitration of these issues in lieu of Department rule-making will invite more employer gamesmanship with the Union and other unions around Minnesota and across industries – which will further undercut the paramount purposes of Minnesota's ESST law.

If you have any questions about the above or want more information, please advise. Thank you for your consideration.

Sincerely,

CUMMINS & CUMMINS, LLP

/s/Justin D. Cummins

Justin D. Cummins

c: Mr. Walter Borgan (via email)

From: Justin Cummins
To: RULES, DLI (DLI)
Subject: Request for Rulemaking
Date: Friday, August 16, 2024 3:36:38 PM
Attachments: image001.png
Conley, Krystel (Justin Cummins).pdf

Dear Ms. Conley:

Please find attached a formal request for rulemaking. Please confirm receipt and when a decision will be made about whether rulemaking will occur. Thank you.

Sincerely,

Justin Cummins
MSBA Board Certified Labor & Employment Law Specialist

Cummins & Cummins, LLP
920 Second Avenue South | Suite 1245
Minneapolis, MN 55402 | 612.465.0108 (t) | 612.465.0109 (f)
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ANOKA COUNTY ATTORNEY
BRAD JOHNSON
JUSTICE & LEADERSHIP

July 31, 2024

Krystle Conley
Rulemaking Coordinator
Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155

Dear Ms. Conley,

I work as an Assistant Anoka County Attorney. I am writing in response to the Department of Labor and Industry's request for comments for possible rules governing earned safe and sick time.

In my role, I represent Anoka County Human Resources. The county would like clarification about one of the latest amendments to the earned-sick-and-safe-time statute that will take effect on January 1, 2025. The language in question is below:

> Nothing in sections 181.9445 to 181.9448 shall be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements provided in sections 181.9445 to 181.9448. All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446. For paid leave accrued prior to January 1, 2024, for absences from work due to personal illness or injury, an employer may require an employee who uses such leave to follow the written notice and documentation requirements in the employer's applicable policy or applicable collective bargaining agreement as of December 31, 2023, in lieu of the requirements of section 181.9447, subdivisions 2 and 3, provided that an employer does not require an employee to use leave accrued on or after January 1, 2024, before using leave accrued prior to that date.

Government Center ✦ 2100 3rd Avenue ✦ Suite 720 ✦ Anoka, MN 55303-5025
Office: 763-324-5550 ✦ rs-attorney@anokacountymn.gov ✦ www.anokacountymn.gov/attorney
Affirmative Action / Equal Opportunity Employer

In 2001, the county converted its time-off benefits for all non-union staff from sick and vacation time banks to Flexible Time Off (FTO). The reasons for using FTO could include personal reasons, vacation, sickness, injury, caring for a relative or friend, etc. This was a very popular change for our employees because employees were then able to use time off for the purpose most useful for them individually. It was also good for management because instead of employees calling in sick on short notices to use up their time, absences were more often planned. Over time, because this was a win for management and employees, all bargaining units also changed their collective bargaining agreements to create FTO banks instead of separate sick and vacation time.

Under the latest statutory amendment to the ESST statute, as quoted on the previous page, will Anoka County have to apply all the ESST requirements and protections to employees' requests for FTO since employees are currently allowed to use their FTO for any reason approved by a manager, including illness or injury?

If the county is required to apply all the ESST provisions to FTO, it may be forced to split up sick time and vacation time and eliminate FTO, which most county employees would view as a significant disadvantage.

Even though a reversion back to sick and vacation banks instead of FTO would be viewed as a loss by both employees and management, employers like Anoka County may need to do so to have some control over the amount of time an employee may be absent from the workplace. Currently, FTO must be approved by managers who can make decisions about time off approval based on coverage, amount of time off used, work performance, and other factors. If the county must apply the laws governing ESST to our employees' FTO usage, it will not be able to deny requests for time off as long the employee states the reason is covered by the ESST law. Unless the absence is more than three consecutive workdays, the county cannot ask for documentation to demonstrate that the time is being taken off for a purpose allowed under the law. Because Anoka County's time-off benefit is so generous (brand new employees accrue approximately 5 weeks FTO in addition to paid holidays and the accrual rate goes up from there to a maximum of 6.5 weeks for employees who have been with the county for 15 years), a law that prohibits employers like Anoka County from putting reasonable parameters on its employees' FTO usage could create such massive staffing problems or work interruption that employers may have to choose to enact policies that neither managers nor employees prefer. The intended goals of the ESST law are not met by such an application. At least not for employers like Anoka County and other municipal employers with similar policies.

ANOKA COUNTY ATTORNEY
BRAD JOHNSON
JUSTICE & LEADERSHIP

Anoka County would appreciate clarity from the Department of Labor and Industry on the impact of this amendment to the ESST statute.

Thank you,

/s/ Kelsey Kelley

Kelsey R. Kelley
Assistant County Attorney
kelsey.kelley@anokacountymn.gov
763-324-5444

From: Kelsey Kelley
To: RULES, DLI (DLI)
Subject: Comments for Possible Rules Governing Earned Sick and Safe Time
Date: Wednesday, July 31, 2024 3:09:26 PM
Attachments: image001.png
image002.png
Letter to DLI re ESST 07.31.2024.pdf

Dear Ms. Conley,
I have attached a letter to this email in response to the Department of Labor and Industry's request for comments for possible rules governing earned sick and safe time. Thank you.

Kelsey R. Kelley (she/her)
Assistant County Attorney
2100 Third Avenue, Suite 720
Anoka, MN 55303
Direct: (763) 324-5444
Email: kelsey.kelley@anokacountymn.gov

CentraCare®

Human Resources

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St. Cloud, MN 56303

Phone 320-251-2700
Fax 320-656-7022

September 6, 2024

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Department of Labor and Industry
443 Lafayette Road N
St. Paul, MN 55155

Sent via email:
dli.rules@state.mn.us

REQUEST FOR COMMENTS for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley:

Thank you for requesting comments regarding possible rules that govern the new Minnesota Earned Sick & Safe Time regulations. CentraCare Health employs approximately 11,300 casual, reserve, temporary, regular part-time, regular full-time non-union and union employees. We have long-standing paid time off and/or vacation and sick leave benefits for the majority of our employees which provide for greater paid time away than the MN Earned Sick & Safe Time regulations require.

CentraCare is strongly urging the Department to draft or amend rules made to Minnesota Statute surrounding MN Earned Sick & Safe Time as follows:

Covered Employees: MN Statute surrounding MN Earned Sick & Safe Time allows for the exclusion of several front-line essential workers including firefighters, volunteer ambulance attendants, paid-on-call ambulance service personnel, elected officials, and individuals appointed to fill vacancies in elected offices. Additionally, the building and construction industry is excluded. *We request the Department also exclude the healthcare industry due to the essential nature of providing health care services. Health care organizations already provide generous paid time off benefits to their employees.*

Increment of Time Used: The regulations currently allow for ESST use in 15-minute to 4-hour increments. *Several shifts are longer than eight hours; Employers should be able to require at least a half-day increment of time to be used to adequately provide coverage by other employees. Example: Employee is scheduled for 12-hour shifts; employer should be able to require at least 6-hours be used.*

Base rate: *For employees that work multiple positions for the employer, the employer should be able to pay their ESST time at the rate all other paid time off is paid. Payroll systems are not able to pull in various rates based on when the employee took the time off.*

ESST application to other paid time off and Attendance Standards: *Employers who provide more generous paid time off benefits run a significant risk of not being able to appropriately staff our hospitals and clinics and to provide critical emergency services with the requirement to protect all hours of a more generous paid time off benefit if used for ESST-eligible reasons. This does not allow an employer to hold employees accountable for attendance policies and creates significant staffing challenges. Employees may have a balance of 300 paid time off hours, call in every other day citing it's for an ESST-eligible*

reason, and end up protected for all 300 hours taken. A business cannot adequately staff in this situation. Additionally, if the employee is not taking 3 consecutive days off, the employer cannot require documentation for the days missed.

If this clause is not retracted, this may force employers to move to separate banks for vacation time and ESST time and, further. In addition, employers may not allow employees to use vacation time for ESST eligible reasons, thereby forcing employees to take unpaid time if they have exhausted their ESST balance. Union contracts don't allow employers to unilaterally change to separate vacation and ESST banks. Employees want more flexible paid time off benefits (and not separate vacation and ESST banks). Attempting to negotiate separate vacation and ESST banks will create disagreement and disharmony between the employer and the union. Having a separate ESST bank that is not paid out upon termination creates a use-it-or-lose it mentality with employees who otherwise like to use their paid time off in a planful manner.

The differentiating of time accrued prior to 1/1/2024 and 1/1/2024 and after is not helpful. HR systems don't have the ability to automatically determine when hours were accrued. When someone uses banked hours, it simply deducts from the total balance, not from the last or the first hours accrued.

Allowing for unused ESST time to roll over into a Vacation bank would be appealing to employees as there is more flexibility in the use of vacation time.

Lump sum: *If an employer is providing a lump sum of ESST hours, employers should be able to pro-rate those hours based on the employee's FTE or hire date within the year.*

No requirement to use ESST time when off for an ESST-eligible reason: *Right now the statute does not allow employers to require employees to use ESST time. This creates a hardship for the employer as an employee may be entitled to more time away than prior to ESST enactment. If an employee takes 12 weeks of FMLA time and does not use their ESST time concurrently, then takes their ESST time, this is very difficult for an employer to staff appropriately. Additionally, an employee could take several days off for ESST-eligible reasons and not use ESST time and, when their absences start to get high and they may be subject to discipline, start using their ESST time.*

Designating one person outside of "family" to use ESST time for: *This creates a significant challenge to administer with a large employee population such as CentraCare.*

CentraCare is committed to serving our patients and their families 24 hours per day, 7 days per week, every day of the year. To do this, we must be able to provide our employees with benefits that support their careers and personal lives. The changes to MN Earned Sick & Safe Time provide significant challenges to our organization in this area.

Please contact me if you have questions or would like to have further conversations related CentraCare's concerns surrounding Minnesota Earned Sick & Safe Time.

Sincerely,

Kimberly Egan
Senior Vice President
Chief Human Resources Officer

From:	Egan, Kimberly
To:	RULES, DLI (DLI)
Cc:	Meehl, Brenda
Subject:	CentraCare Health MN ESST Comments to DOL Sept 2024
Date:	Thursday, September 5, 2024 12:36:39 PM
Attachments:	image001.png CentraCare Health MN ESST Comments to DOL Sept 2024.pdf

Dear Krystle

Please find the attached letter which contain our comments as it relates to the possible rules governing Earned Sick and Safe Time.

Sincerely,

Kim Egan, MBA, SPHR|SCP
Chief Human Resources Officer
(she/her/hers)
Assistant: Kari Plafcan | 320-251-2700 x 53614 I kari.plafcan@CentraCare.com
St. Cloud Hospital
1406 6th Ave. North
St. Cloud, MN 56303

From: Leah Davis
To: RULES, DLI (DLI)
Subject: Comment Regarding Possible Rules Governing ESST - Revisor"s ID Number R-04877
Date: Friday, September 6, 2024 2:01:37 PM
Attachments: image001.png

Dear Ms. Conley,

I am writing to provide comments regarding the potential adoption of rules governing Earned Sick and Safe Time (ESST) as outlined in Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448. Our organization represents dozens of employers who are committed to offering comprehensive paid leave policies to their employees. However, we have significant concerns regarding the practical implications and organizational impacts of the new ESST provisions, effective January 1, 2025.

The requirement to provide employees with time off for sick and safe leave is well-intentioned and supported. However, extending the ESST rules to encompass all available paid time off, including any other vacation and other personal leave balances available for use related to illness or injury, imposes an unrealistic burden on employers. This is especially true for small employers who may not have the administrative capacity or resources to comply with such expansive regulations, but still wish to offer additional time off to their employees to the fullest extent their budgets and capabilities allow.

We believe that while it is important to ensure employees have access to sick and safe leave, offering additional sick time or more generous leave policies should be left to the employer's discretion. Mandating that all paid time off be subject to ESST rules will inevitably lead to unintended consequences, such as:

1. **Administrative Complexity**: Employers may struggle to manage and track different types of leave under a unified ESST framework, leading to increased administrative costs and potential compliance issues.
2. **Reduced Flexibility**: Employers who currently offer flexible and generous leave policies may be forced to reduce these benefits to meet stringent ESST requirements, ultimately disadvantaging employees.
3. **Economic Impact**: The financial and operational strain of complying with expanded ESST rules could disproportionately affect small businesses, potentially leading to reduced workforce or business closures.
4. **Potential Abuse**: With all paid time off being subject to ESST rules, there is a risk that employees might misuse vacation or personal leave as ESST, complicating compliance and tracking efforts for employers.
5. **Unmanageability for Employers:** The "no questions asked" provision of the ESST rules, if employers cannot restrict its use or take any action for excessive or unexcused absences, creates unmanageable situations for employers. This is especially challenging for small businesses, cities, and non-profits who have limited staff and resources to cover unexpected or prolonged

absences. The legislation, as written, imposes significant restrictions and disadvantages for employers who wish to offer more generous policies but need the ability to manage leave effectively to maintain operations.

To address these concerns, we propose the following solutions and recommendations:

1. **Exemption for Generous Policies**: Employers with additional/larger banks of sick leave or PTO, or those who offer more generous leave policies than required by ESST, should not have these policies subject to ESST eligibility and employee use compliance. This would allow employers to maintain their beneficial leave programs without the added burden of regulatory compliance.
2. **Flexible Implementation**: Provide guidelines that allow employers to integrate ESST requirements into their existing leave policies without necessitating a complete overhaul of their current systems.
3. **Clear Distinctions**: Establish clear distinctions between different types of leave (e.g., sick leave, vacation, personal leave) to prevent potential abuse and simplify tracking and compliance for employers.

We urge the Department of Labor and Industry to consider these impacts during the rulemaking process and recommend that any additional sick time or generous leave policies beyond ESST should remain at the employer's design and discretion. This approach would allow employers to continue offering valuable benefits to their employees without the undue burden of extensive regulatory compliance.

Thank you for your attention to this matter. We hope our concerns will be considered as the rules are developed. We look forward to reviewing the draft rules and providing further input to ensure that the final regulations are both fair and feasible for all Minnesota employers.

Sincerely,

Leah Davis
Partner

DIRECT 507.524.2347
MAIN 507.625.2727
Send Me Secure Files

100 Warren Street, Ste 600
Mankato, Minnesota 56001
AbdoSolutions.com

From: Huffer, Mary
To: RULES, DLI (DLI)
Cc: Huffer, Mary
Subject: Possible rules governing earned sick and safe time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date: Monday, August 26, 2024 11:21:58 AM
Attachments: image001.png

ATTN: Krystle Conley, Rulemaking Coordinator, Office of General Counsel

Hello,

I am writing to seek clarification regarding the Earned Sick and Safe Time (ESST) provision under Minnesota law, specifically concerning the maximum number of hours allowed in a single day's request.

As an employer committed to adhering to the ESST regulations, I have encountered ambiguity in the interpretation of how many hours an employee can request for payment in one day. The current guidelines do not explicitly define the upper limit for the number of hours that can be claimed for a single day of leave.

This lack of clarity has led to confusion among employees and management alike, potentially resulting in inconsistent application of the policy and unintended compliance issues. To ensure proper implementation of the ESST provisions and to provide clear guidance for all parties involved, I kindly request that the Department provide explicit information on the maximum number of hours that can be requested and paid for in a single day under the ESST provisions.

To provide a specific example: An employee needs time off to attend a doctor appointment. The employee makes up the missed work hours later in the day, so they are being paid for a full day's work. The employee wants to claim the time missed for the doctor appointment and be paid ESST for those hours as well. I believe it is the spirit of the law to ensure the employees workday is made whole when paying out ESST. Not to be paid over and above their normal number of hours.

Your timely assistance in clarifying this matter will greatly assist in aligning our practices with the intended regulations and ensuring fair and accurate application of MN ESST.

Thank you for your attention to this matter. I look forward to your response.

Mary Huffer
Mary Huffer | Senior Payroll Manager
952-832-8367 | mhuffer@doherty.com
7625 Parklawn Ave. Edina, MN 55435
Code 2 Logos_ALL-01.png
Woman-owned Businesses and Top Workplaces, Offering Employment Solutions since 1980.

From:	Megan Schwanz
To:	RULES, DLI (DLI)
Subject:	Subject: Comments on Possible Rules Governing Earned Sick and Safe Time (ESST) – Revisor's ID Number R-04877
Date:	Thursday, September 5, 2024 4:26:35 PM
Attachments:	image001.png

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155
Phone: 651-284-5006
Email: dli.rules@state.mn.us
09/05/2024

Subject: Comments on Possible Rules Governing Earned Sick and Safe Time (ESST) – Revisor's ID Number R-04877

Dear Ms. Conley,

I am writing to provide comments regarding the potential adoption of rules governing Earned Sick and Safe Time (ESST) as outlined in Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448. Our organization represents dozens of employers who are committed to offering comprehensive paid leave policies to their employees. However, we have significant concerns regarding the practical implications and organizational impacts of the new ESST provisions, effective January 1, 2025.

The requirement to provide employees with time off for sick and safe leave is well-intentioned and supported. However, extending the ESST rules to encompass all available paid time off, including any other vacation and other personal leave balances available for use related to illness or injury, imposes an unrealistic burden on employers. This is especially true for small employers who may not have the administrative capacity or resources to comply with such expansive regulations, but still wish to offer additional time off to their employees to the fullest extent their budgets and capabilities allow.

We believe that while it is important to ensure employees have access to sick and safe leave, offering additional sick time or more generous leave policies should be left to the employer's discretion. Mandating that all paid time off be subject to ESST rules will inevitably lead to unintended consequences, such as:

1. **Administrative Complexity**: Employers may struggle to manage and track different types of leave under a unified ESST framework, leading to increased administrative costs and potential compliance issues.
2. **Reduced Flexibility**: Employers who currently offer flexible and generous leave policies may be forced to reduce these benefits to meet stringent ESST requirements, ultimately disadvantaging employees.
3. **Economic Impact**: The financial and operational strain of complying with expanded ESST rules

could disproportionately affect small businesses, potentially leading to reduced workforce or business closures.

4. **Potential Abuse**: With all paid time off being subject to ESST rules, there is a risk that employees might misuse vacation or personal leave as ESST, complicating compliance and tracking efforts for employers.
5. **Unmanageability for Employers:** The "no questions asked" provision of the ESST rules, if employers cannot restrict its use or take any action for excessive or unexcused absences, creates unmanageable situations for employers. This is especially challenging for small businesses, cities, and non-profits who have limited staff and resources to cover unexpected or prolonged absences. The legislation, as written, imposes significant restrictions and disadvantages for employers who wish to offer more generous policies but need the ability to manage leave effectively to maintain operations.

To address these concerns, we propose the following solutions and recommendations:

1. **Exemption for Generous Policies**: Employers with additional/larger banks of sick leave or PTO, or those who offer more generous leave policies than required by ESST, should not have these policies subject to ESST eligibility and employee use compliance. This would allow employers to maintain their beneficial leave programs without the added burden of regulatory compliance.
2. **Flexible Implementation**: Provide guidelines that allow employers to integrate ESST requirements into their existing leave policies without necessitating a complete overhaul of their current systems.
3. **Clear Distinctions**: Establish clear distinctions between different types of leave (e.g., sick leave, vacation, personal leave) to prevent potential abuse and simplify tracking and compliance for employers.

We urge the Department of Labor and Industry to consider these impacts during the rulemaking process and recommend that any additional sick time or generous leave policies beyond ESST should remain at the employer's design and discretion. This approach would allow employers to continue offering valuable benefits to their employees without the undue burden of extensive regulatory compliance.

Thank you for your attention to this matter. We hope our concerns will be considered as the rules are developed. We look forward to reviewing the draft rules and providing further input to ensure that the final regulations are both fair and feasible for all Minnesota employers.

Sincerely,

Megan Schwanz, SHRM-CP
Sr. Manager – HR Advisory

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MAIN 507.625.2727
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Mankato, Minnesota 56001
AbdoSolutions.com

FEINBERG, DUMONT & BRENNAN

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September 5, 2024

Sent Via Electronic Mail
dli.rules@state.mn.us

Re: Request for Comments for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877.

Dear Ms. Conley,

This office represents the International Brotherhood of Teamsters, Local Union No. 120 ("Local 120"), the exclusive bargaining representative for approximately 7,000 union members in the state of Minnesota. Please accept this letter as response to the Minnesota Department of Labor and Industry's request for comments on the possible adoption of a new part of Minnesota Rules, chapter 5200, for rules governing earned sick and safe time ("ESST").

Since the adoption of Minnesota ESST guidelines, employers, who are parties to collective bargaining agreements ("CBA") with Local 120, have consistently taken the position that ESST permits them to unilaterally change the explicit language of bargained-for vacation, or other paid-time-off articles, to satisfy their ESST obligations. Frequently, employers cite the Minnesota Department of Labor and Industry's ESST guidance[1], which appears to allow employers to use existing vacation policies to satisfy their ESST obligations, as justification.

Meanwhile, unions have remained steadfast that this is not the intent of the law, citing to Minnesota Statute 181.9448 subd 1(b).[2] To the extent the Minnesota Department of Labor and Industry's guidance permits employers to use vacation policies and other leave policies to satisfy their ESST obligations, unions have maintained that this guidance was meant *only* to apply to employers' own policies, not policies that were the result of the give-and-take of collective bargaining. While employers are free to implement and change their own policies, this is not the case for bargained-for benefits, which have been negotiated in exchange for other benefits to employers. Furthermore, policies found in CBAs contain various parameters that govern who can take vacation time and other paid-time off; when it can be taken; and how it can be taken (i.e., only a certain number of employees

[1] Per Minn. Stat. §181.9448, subd. 1(e): "Employers who provide earned sick and safe time to their employees under a paid time off policy or other paid leave policy that may be used for the same purposes and under the same conditions as earned sick and safe time, and that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements provided in sections 181.9445 to 181.9448 are not required to provide additional earned sick and safe time."

[2] "Nothing in sections 181.9445 to 181.9448 shall be construed to limit the right of parties to a collective bargaining agreement to bargain and agree with respect to earned sick and safe time policies or to diminish the obligation of an employer to comply with any contract, collective bargaining agreement, or any employment benefit program or plan that meets or exceeds, and does not otherwise conflict with, the minimum standards and requirements provided in this section."

can take a vacation at a given time, vacations are bid on by seniority, etc.). Therefore, if employers were permitted to use bargained-for vacation and other paid leave benefits to satisfy their ESST obligations, this would provide legal cover for employers to unilaterally rewrite the contract. This would not only unfairly enrich employers by allowing them to rob workers of hard-bargained-for benefits without requiring them to give up whatever was bargained in exchange, but it would also frustrate labor policy and conflict with the National Labor Relations Act. Such an interpretation could not possibly be the intent of a statute enacted to protect workers.

Local 120 requests clarification on this issue. Specifically, we request that Minnesota Department of Labor and Industry clarify that the guidance permitting employers to use vacation and other paid leave policies to satisfy their ESST obligations *does not* apply to policies provided for in collective bargaining agreements, and that the above statutory language expressly prohibits employers from unilaterally using collectively bargained for vacation time or other paid leave to satisfy their ESST obligations.

Do not hesitate to contact our office with any questions.

Very truly yours,

Michael N. Najjar

From:	Michael N. Najjar
To:	RULES, DLI (DLI)
Cc:	Tom Erickson; Paul Slattery; Jkmakarios@gmail.com
Subject:	Comments Regarding Minnesota ESST
Date:	Thursday, September 5, 2024 1:46:31 PM
Attachments:	09.05.24 MNN Letter to MN DLI.pdf

Good Afternoon Ms. Conley:

Please find attached a letter outlining comments for submission regarding the Minnesota Department of Labor and Industry's request for comments on its possible adoption of a new part of Minesota Rules, chapter 5200, for rules governing earned sick and safe time.

Please do not hesitate to contact me with any questions.

Thanks,

Mike
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LEAGUE of MINNESOTA CITIES

September 5, 2024

Krystle Conley, Rulemaking Coordinator
Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155

Re: Request for comments for possible rules governing ESST, Minnesota Rules 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley,

Thank you for the opportunity to submit these comments on behalf of the League of Minnesota Cities members in response to the possible adoption of rules governing Earned Sick and Safe Time (ESST), Minnesota Statutes §§ 177.50 and 181.9445 to 181.9448.

The League of Minnesota Cities has a voluntary membership of 839 out of 855 Minnesota cities. It provides a variety of services to its members, including education, training, policy-development, risk-management, and advocacy services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

At the League of Minnesota Cities, we have the opportunity to hear from our members on questions they are working through involving the new law that can make implementation challenging. With this lens, we share the following, and would be happy to discuss any of the content of this letter.

1. Our members seek further guidance clarifying the interplay of Family Medical Leave Act (FMLA) leave running concurrently with ESST leave and supporting employee documentation. For example, if an employee is on intermittent FMLA leave, the employee may not necessarily be absent for three consecutive, scheduled days, which is the threshold for an employer to request employee documentation supporting an ESST absence. With the Minnesota Department of Labor and Industry 2024 FAQs, it is suggested requesting FMLA documentation for such leave, which may never require an absence of more than three

consecutive scheduled days, may not be in conflict with ESST rules. However, written guidance confirming this would be much appreciated.

Specifically, the 2024 DLI FAQs state:

> "May an employee use ESST at the same time as other protected leave under other state or federal laws?
>
> Yes, as the ESST law does not limit or otherwise affect the applicability of other laws that extend other protections to employees."

However, Minn. Stat. § 181.9448 subd. 1(c) reads "nothing in sections 181.9445 to 181.9448 shall be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard that provides for a greater amount, accrual, or use by employees of paid sick and safe time or that extends other protection to employees." This could be interpreted to mean requesting FMLA documentation prior to three, consecutive, scheduled absences is in conflict with the ESST law.

2. As noted above, there are specific requirements for employers regarding when and what type of documentation may be requested from employees for ESST absences. However, there are no rules regarding how employers may intervene in cases when employee abuse of ESST leave is suspected. While it is assumed employees are using ESST for covered reasons and in ways in accordance with the law, employers and work teams have no safety net should abuse occur. Federal FMLA regulations address the right of employers to inquire, for example, when an employee's use of intermittent leave exceeds expectations as noted in the medical certification or is being used at times that are seemingly incompatible with the serious health condition at issue. As written, nothing in the ESST law precludes an employee from using ESST in ways that are highly disruptive to providing essential services to residents without any checks and balances, such as repeated Friday and Monday patterned absences, simply because the employee has not met the threshold for requesting supporting documentation.

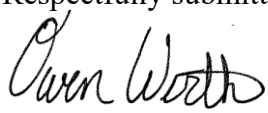
3. Though Minn. Stat. § 181.9448, subd. 1 states it should not be construed to discourage employers from retaining policies that exceed the ESST law's minimum requirements, as amended, it has effectively punished public sector employers who routinely provide more generous leave than the ESST law requires. The expanded ESST requirements impact employers by exceeding their plan designs regarding eligibility of who is covered, what the leave may be used for, in addition to other standard provisions, many of which resulted from the collective bargaining process, all of which disincentives employers from continuing to

offer more generous leave plans. Prior to January 1, 2024, public sector leave laws more effectively addressed the challenge cities face in providing and maintaining critical city services to residents and staying competitive as an employer of choice. Establishing additional carve outs for more generous leave plans will encourage public sector employers to continue to be creative and responsive to their employees, while also differentiating their benefits packages from other employers.

Additionally, there is a reference specifically to "due to personal illness or injury," yet the statutory language also references §§ 181.9445 to 181.9448. Minnesota Statute § 181.9447 (as amended) references various covered uses of ESST. Guidance clarifying whether only absences specific to personal illness or injury as it pertains to the expanded leave provision for 2025 would be helpful and much appreciated.

4. Minnesota Statute § 181.9447 was amended to include new weather exception language, which was very much appreciated. What is less clear is what language would constitute "clearly and unambiguously waiv[ing] application" of section 181.9447, subd 1, clause (4). Does the agency have any suggested language to offer employers for the collective bargaining process or to include in personnel policies?

Respectfully submitted,



Owen Wirth
Intergovernmental Relations Representative
League of Minnesota Cities

From: Wirth, Owen
To: RULES, DLI (DLI)
Subject: ESST Rulemaking - LMC Written Comment
Date: Thursday, September 5, 2024 12:36:06 PM
Attachments: LMC 2024 - DLI Requests for Commentary.pdf

Ms. Conley,
On behalf of the League of Minnesota Cities, please find the attached written comment regarding the Earned Sick and Safe Time rulemaking period.
Thank you.
Best,
Owen

Owen Wirth | **Intergovernmental Relations Representative**
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MEMORANDUM

TO: Krystle Conley, Rulemaking Coordinator
Office of General Counsel
dli.rules@state.mn.us

FROM: Bruce J. Douglas, Esq.
Samantha C. Bragg, Esq.

DATE: September 6, 2024

SUBJECT: Comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law

This correspondence is in response to the Minnesota Department of Labor and Industry's ("the Department") request for comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law. We suggest the Department consider promulgating rules addressing the following subjects.

Increments of Use

The ESST law states: "[ESST] may be used in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15-minute increments nor can the employer require use of [ESST] in more than four-hour increments."

The Department should make rules stating an employer can require use of ESST between 15 minutes and 4 hours regardless of the increment of time employees are paid in.

Paid Time Off Policies

The ESST law states: "All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446."

MNDOLI provided the following 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."

The Department should make rules clarifying whether this means if an employer provides employees paid leave in an amount beyond the minimum ESST requires, and permits employees to use such paid leave for personal illness or injury, then the employer must treat the entire paid leave balance as ESST, or if an employer can designate only a portion of such time for ESST. For example:

- If an employer has two "buckets" of paid time off (one for traditional vacation purposes that cannot be used for personal injury/illness and one for MN ESST) will the vacation bucket be subject to the ESST law?

- If an employer requires employees to use PTO or vacation time for FMLA, does the paid leave bucket become subject to the ESST law because FMLA can be used for personal injury/illness, thus subjecting the vacation/PTO bucket to ESST requirements?

- If an employer has one bucket of PTO, does the ESST law require the employer to reinstate all unused PTO if the employee is rehired within 180 days of separation or can it cap the reinstatement amount at 48 or 80 hours?

- If an employer has a PTO/vacation bucket and allows employees to use PTO/vacation for ESST-covered purposes but does not require it, do the ESST requirements still apply to the PTO/vacation bucket?

- How does this affect unlimited PTO/vacation policies?

Requiring Use of ESST

The law does not specify whether employers can require employees to use ESST (or PTO if it uses its PTO policy to comply with ESST requirements). However, the Department's FAQ states:

> **Can an employer require an employee to use ESST if they miss work for an ESST-eligible reason?** The ESST law does not require an employee to use ESST, but an employee may choose to use ESST for eligible purposes.

The Department should make rules clarifying that employers can require employees to use ESST (or PTO) for an ESST-covered purpose in the same way employers can require employees taking FMLA leave to use accrued vacation or PTO. The Department should also make rules clarifying that if an employee takes unpaid time off for an otherwise ESST covered purpose, the unpaid leave is not protected by the ESST law because ESST is a paid leave benefit.

Eligibility

Employee is defined, in part, as follows under the ESST law: "any person who is employed by an employer, including temporary and part-time employees, who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota." The Department should make rules clarifying how this applies to non-Minnesota based employees. For example:

- How does this apply to non-Minnesota based employees working while riding as a passenger on public transportation (i.e., train, plane, bus) through Minnesota? What about non-Minnesota based employees that drive through for business or make deliveries in Minnesota?

- If a non-Minnesota based employee accrues ESST while working in Minnesota, can the employer only allow the employee to use ESST when the employee is scheduled to perform work in Minnesota?

Collective Bargaining Agreements ("CBA")

The Department should make rules clarifying that nothing in the ESST law prevents an employer from using the vacation or paid leave provided in a Collective Bargaining Agreement to comply with the ESST law or bargaining with a union for such a procedure.

Prorating

The ESST law is silent on whether employers can prorate frontloaded ESST hours. However, the Department issued this FAQ:

> **May an employer prorate the front loading of ESST hours for partial-year employees or part-time employees?** No, the ESST law does not authorize prorating front-loaded hours. An employer must provide at least one hour of ESST for every 30 hours worked, up to at least 48 ESST hours per year, or front load at least 48 hours. However, an employer could choose to place new employees on an accrual system when hired, and then switch them to a front-loaded system at the beginning of the next accrual year.

The Department should make rules clarifying that employers can prorate frontloaded hours because nothing in the ESST law supports the FAQ statement. This would be consistent with how employees who start mid-year, for example, will not be able to accrue as many hours as an employee who works the full year.

Notice Requirements

The Department's sample ESST notice incudes a "language notice" on the last page indicating that employees can request the information in a different language. However, the statute does not require employers to include a "language notice." The Department should clarify whether this portion of the notice is required or merely recommended.

FAQs

If the Department creates rules, we request the FAQs either by removed from the Department's website or updated to align with the rules to avoid confusion amongst employers and employees.

Rules Format

If the Department creates rules, we request the format to be similar of that to the Family and Medical Leave Act rules (29 C.F.R. pt. 825) for clarity for employers, employees, and the public.

BJD:SCB

63881502-OGLETREE

From: Pesch, Peggy L.
To: RULES, DLI (DLI)
Cc: Douglas, Bruce J.; Bragg, Samantha C.
Subject: Comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law
Date: Friday, September 6, 2024 12:26:56 PM
Attachments: 2024.09.06 Memorandum to MN DLI - Comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law.pdf

Ms. Conley,

Please see the attached Memorandum from Bruce Douglas and Samantha Bragg with comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law. Please let us know if you have any questions or issues with the attachment.

Respectfully,

Peggy L. Pesch, LTC4 Technology Certified | Practice Assistant | Ogletree Deakins
Capella Tower, 225 South Sixth Street, Suite 1800 | Minneapolis, MN 55402 | Telephone: 612-336-6846
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Minnesota
Employment
Law Council

MEMORANDUM

TO:	Krystle Conley, Rulemaking Coordinator (dlirules@state.mn.us) Office of the General Counsel Minnesota Department of Labor & Industry
FROM:	Minnesota Employment Law Council
DATE:	September 6, 2024
RE:	Earned Sick & Safe Leave Rulemaking

Thank you for the opportunity to offer comments regarding possible rulemaking governing Earned Sick and Safe Time ("ESST").

Since the passage of H.F. 5247 in May 2024, the issue of most concern to Minnesota employers has been DOLI's interpretation of the amendment to Section 181.9448 to impose the requirements of the ESST statute to an employer's entire PTO plan – regardless how many hours of PTO are provided – if the employer uses its PTO plan to satisfy the requirements of the ESST statute. *See* https://dli.mn.gov/sick-leave-changes?utm_medium=email&utm_source=govdelivery ("ESST application to other paid time off").

To be sure, DOLI's interpretation – as we understand it – is not the only possible interpretation of the 2024 amendment. Consistent with legislative history and good policy, as described below, the better interpretation of the phrase "for absences from work due to personal illness or injury"[1] is that Subdivision 1 still refers only to categories of paid time off that are specifically designated for sick and safe time purposes, and imposes the requirements of the ESST statute on hours in excess of 48 only if the employer chooses to provide a greater number of hours specifically designated for ESST-covered purposes. This interpretation also is consistent with Minn. Stat. 181.9446(b)(1) ("The total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, *unless an employer agrees to a higher amount*.") (emphasis added).

As such, MELC urges that rulemaking confirm that an employer's PTO policy or vacation policy is not subject the minimum requirements of the ESST statute, to the extent employers provide employees with paid time off in excess of the statutory minimum using those vehicles.

Benefits of PTO

Many Minnesota employers utilize Paid Time Off ("PTO") plans. Rather than separate banks of time for "Vacation," "Sick and Safe Leave" or other categories of paid time off, PTO plans maximize flexibility for employees by providing a single bank of paid time off hours that employees may use for any purpose. If an employee needs more time off for personal health reasons in a given year, PTO allows employees that flexibility. By contrast, if an employee wants to take extra family vacation time in a particular year, PTO allows employees to do so. And if the employee's needs change the following year, PTO allows the employee to use available paid time off to serve that employee's changing needs.

[1] One of the curious features of H.F. 5247 is that it only addresses one category of leave protected under the ESST statute, personal illness or injury. The implications are not clear if an employer provides more generous paid time off for caring, safety, closings, communicable diseases or bereavement.

Given the benefits of PTO plans, it would only serve to harm employees who otherwise enjoy PTO benefits if the ESST statute were interpreted to create disincentives to employers providing more generous PTO benefits. Until DOLI's recent interpretation of the ESST amendment, the law appeared to be clear that the requirements of the ESST statute only applied to time specifically designated by employers as "Sick and Safe Leave" or the like. However, DOLI's recent guidance draws that into question.

Likewise, even for employers who provide separate banks of time for "sick and safe leave" and "vacation," DOLI's interpretation also appears to suggest that an employer's vacation bank may be subject to the ESST requirements if an employer chooses to allow employees to use vacation time for absences due to personal illness or injury.[2] If so, that will create substantial disincentives to employers providing basic vacation benefits.

ESST's minimum requirements create disincentives to more generous paid time off policies.

Throughout the legislative development of the ESST statute, MELC's members have been clear that they favor generous paid time off so employees may be absent from work, with pay, when personal or family needs require. Indeed, long before the passage of the ESST statute, MELC's members provided paid time off benefits in excess of what the law currently requires.

However, there can be no doubt that the benefits provided under the ESST statute impose burdens on employers. It is difficult for employers to schedule workers and otherwise maintain operations when employees are absent with little or no notice, as permitted by the ESST statute. Likewise, if an employee has demonstrated unacceptable attendance, the ESST statute's anti-retaliation provisions limit the employer's ability to manage those attendance deficiencies when absences potentially overlap with ESST purposes.

To reiterate, MELC accepts the policy judgment that those employer challenges are outweighed by the benefits to employees provided by the ESST statute's protections. *However, if the ESST statute's requirements are broadly expanded to an employer's PTO plan or vacation hours, there should be no mistake that doing so would discourage employers from providing more generous benefits.*

Illustrations may be useful. For example, assume the common scenario where an employer offers three weeks of PTO to employees annually (120 hours of PTO). If the amendment to Section 181.9448 means that *all* 120 hours of PTO are subject the minimum requirements of the ESST statute – *regardless of the reason for use* – so long as the employer uses its PTO hours to satisfy the 48-hour per year ESST requirement, then the employer must allow the employee to use all 120 hours of PTO with little or no notice. Or, if an employee has attendance deficiencies, that employee may insulate themselves from consequences for poor attendance simply by assigning an otherwise unexcused absence day to "PTO."

Under DOLI's interpretation, that is true even if the employee has already used a full 48 hours of *bona fide* sick and safe leave time.

Alternatively, assume an employer chooses to provide separate banks of time for "sick and safe leave" and "vacation." If an employee has used all of their ESST time for a given year and has the need for

[2] Taken to its extreme, DOLI's guidance could be interpreted to say that an employer's vacation benefit is subject to the requirements of the ESST statute regardless whether employers allow employees to use vacation benefits for ESST-covered purposes, because such time is paid time off "that is more than the amount required under the ESST law for absences due to personal injury or illness." MELC understands that was not DOLI's intent, but the language used by DOLI permits that conclusion. Rulemaking should make clear that is not the case.

further time away from work due to a personal illness – and the employer voluntarily offers to allow the employee to use some vacation time as a courtesy – DOLI's interpretation that *any* time an employer makes available for sick and safe time purposes suggests that the employer's act of generosity results in the employee's vacation time also being subject to the minimum requirements of the ESST statute.

Again, permitting those outcomes under the law would serve to discourage employers from providing more generous PTO or vacation benefits, or allowing employees flexibility in the use of such benefits, in order to avoid perverse impacts under the ESST statute.

Legislative History

The legislative history of the 2024 amendment also is important. As originally introduced in H.F. 3882/S.F. 3787 in February 2024, the amendment was focused on employer policies that specifically provided employees with sick and safe time. The title of Section 181.9448, Subdivision 1, is "Effect on more generous *sick and safe time policies.*" (emphasis added). Likewise, the language of the proposed amendment was focused on time provided by employers for the specific purpose of "absences from work due to personal illness or injury." There was no mention of an effect on broader employer PTO policies.

Indeed, employers were assured that the proposed amendment to Section 181.9448 was not intended to affect employer paid time off policies other than sick and safe time policies. During testimony on S.F. 3787 on March 5, 2024, Commissioner Blissenbach described the relevant provision as providing that "earned sick and safe time protections apply to all earned sick and safe time not just the minimum amount of earned sick and safe time offered under the new law." (March 5 hearing recording at 9:40). There was no mention of employers' broader PTO plans at all, much less an indication that the intent of the bill was to impose the requirements of the ESST statute to the entirety of those plans. To the contrary, Commissioner Blissenbach's testimony seemed clear that if employers offer a designated sick and safe leave benefit – specifically "for absences from work due to personal illness or injury" – then the entirety of that bank of time is subject to the minimum requirements of the ESST statute, nothing more.

It was not until the 4th Engrossment of H.F. 5247, posted on May 20, 2024 – after final passage – that the bill included any reference to "paid time off and other paid leave . . . in excess of the minimum among required in section 181.9446." At no time was there any testimony by the authors that the final bill language was intended to have broader effect than the original.

Presumably, it was not the legislature's intent to impose the mandates of the ESST statute on paid leave beyond the scope of the law and unrelated to its purpose. That is particularly so because doing so would act as a disincentive to employers providing more generous paid leave benefits, to the detriment of employees who enjoy those benefits, as noted above.

Recommended rules

Based on the foregoing considerations, MELC respectfully suggests that rulemaking should clarify that to the extent employers provide paid leave for reasons other than "absences from work due to personal illness or injury," such paid leave is not subject to the minimum standards and requirements in Sections 181.9445 to 181.9448. For example, if an employer provides a sick and safe leave benefit that meets or exceeds the requirements of the ESST statute, and also provides additional hours that may be used for vacation or other purposes, the rules should clarify that the employer's additional hours are not subject to the requirements of Sections 181.9445 to 181.9448. That is true whether the second category of paid time off is called "vacation," "PTO," "personal holidays" or something else.

For the same reasons, if the employer has a single category of "PTO" and allocates and tracks part of that time to ensure that employees receive the full benefit of the ESST statute, inclusive of at least 48 hours per year that is protected by the provisions of Sections 181.9445 to 181.9448, the remainder of the paid time off benefit – which is not designated "for absences due to personal injury or illness – is not subject to the requirements of the statute. In that scenario, if an employee knowingly chooses to use paid time off hours that otherwise would have been available for ESST-covered purposes, they should be allowed to do so.

Likewise, where an employer elects to offer vacation time (however named) that is not specifically designated for protected ESST purposes, the rules should clarify that such vacation time does not become subject to the statutory requirements merely because an employer elects to allow an employee to use some of that time for ESST purposes as a courtesy to the employee.

Rather, the rules should confirm the intent apparent in the original iteration set forth in H.F. 3882/S.F. 3787. If employers offer a designated sick and safe leave benefit – specifically "for absences from work due to personal illness or injury" – then that bank of time is subject to the minimum requirements of the ESST statute. However, if an employer offers paid time off for different purposes, that time is not subject to the requirements of the ESST statute simply because an employer may elect to allow an employee to use such time for reasons that would qualify for ESST leave as a courtesy to employees. Likewise, if an employer offers a broad PTO benefit – effectively placing sick leave and vacation time in a single bank to maximize flexibility for employees and ease of administration for employers – the entirety of that bucket is not subject to the ESST minimum requirements insofar as not all of that time was intended to be "for absences from work due to personal illness or injury."

Absent such clarification, employers will be motivated not to provide more generous paid time off benefits – or restrict flexibility in employees' use of paid time off benefits – to the detriment of employees who enjoy those benefits.

Related, rulemaking should clarify the exception for "other salary continuation benefits." For salaried employees, PTO generally operates as a salary continuation benefit – salaried employees generally receive their salary for days on which they use PTO. This adds to the confusion regarding the treatment of PTO under the 2024 amendment. If an employer's entire PTO plan is subject to the requirements of the ESST statute notwithstanding such plan's operation as a salary continuation benefit, there appears to be an irreconcilable conflict in the new language of Minn. Stat. § 181.9448.

Thank you again for your time and your consideration of MELC's input; we would appreciate the opportunity for further discussions.

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Ryan Mick
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Cell: 651.442.2862

From: Mick.Ryan@dorsey.com
To: RULES, DLI (DLI)
Cc: molly.sigel@faegredrinker.com
Subject: ESST Rulemaking
Date: Friday, September 6, 2024 2:21:07 PM
Attachments: image001.png
MELC Memo DOLI re ESST Rulemaking 9.6.24.pdf

Ms. Conley:

Please find attached a comment in response to the Department of Labor and Industry's *Request for Comments for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877*, submitted on behalf of the Minnesota Employment Law Council.

Thank you for your consideration of MELC's input.

Regards,

Ryan E. Mick
Partner
Labor & Employment Practice Group Co-Leader

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From: Terri K
To: RULES, DLI (DLI); Terri Karkoc
Subject: ESST law that require clarification or guidance. MN State Register, Monday 22 July, 2024
Date: Thursday, September 5, 2024 8:04:25 PM

Good evening, I hope this message finds you well and in good spirits. I am writing to express my concerns, as an employee, with the ambiguity of the ESST Law .

My initial thoughts are that this is a long overdue law applicable to many deserving employees who for years have not been offered benefits to this extent. As an employee for a company now into my 10th year I think this should be in addition to the "company earned PTO" (PTO) as explained in my employee handbook as follows.

"The company recognizes the importance and necessity of time away from your job for purposes of leisure, recreation, and relaxation. All regular full-time employees shall qualify for PTO benefits in accordance with the following schedule:

"PTO is accrued on a weekly basis after your probationary period. (60 days) If you pass your probationary period, your PTO will be back dated to your hire date"

Earned PTO Schedule
Years one and two of service- 48 hours
Year three of service- 64 hours
Years four through seven- 80 hours
Years eight through fifteen year-120 hours

I am in my 9th/10th year right now and I have ***earned my PTO for leisure, recreation and relaxation***. Now comes along a **LAW** stating that the employer must recognize the ESST law for **other** issues (emergency/medical, self or family, abuse, assault, mental health) that may commonly arise in any life situation.

My company handbook is conflicting in the following paragraph stating that *"Full time employees will receive up to **(40) hours** of paid PTO after successful completion of (1) year of employment, measured from their first actual day of work. Subsequent PTO time will be calculated the same way. Part time employees will receive up to (20) hours of paid PTO as set forth above. A minimum of 20 scheduled hours per week is required to qualify".*

The ESST law states that an employee who is expected to work 80 hours or more will be entitled to 1 hour of ESST for every 30 hours worked. According to our handbook these employees would not be accumulating/earning 2 hours if they were to continue employment at/beyond 60 days (probationary period).

My employers are neglectful to address this issue (ESST Law) in our hand book. I have

spoken with my employers on a number of occasions requesting an updated handbook addressing the issue according to this new law.

I have spoken with many family members and friends and am told that their places of employment are also refusing to address this. I know for a fact that Heggie's Pizza is one of them and has refused to provide employees with a written handbook with clear (policies).

Please make the ESST rules/law less ambiguous. Please state that this is an additional employer funded obligation (benefit) **in addition to** any already established Company PTO earning requirements (loyalty, tenure, performance).

Please feel free to reply or let me know of any new developments in the regard to ESST Law and how it applies to other earned benefits in the workplace.

Sincerely,

Terri L. Karkoc

Success is only one part inspiration; the rest requires dedication and perspiration

This message may have been sent from my mobile device
Please disregard any errors in spelling or grammar

From: Scott D. Blake
To: RULES, DLI (DLI)
Subject: ESST and FMLA
Date: Wednesday, September 18, 2024 1:21:12 PM
Attachments: image069563.png
image172958.png
image938805.png
image462261.png

Byron,

Thanks for speaking at the MSBA event this afternoon. I was hoping you could provide one clarification on the FMLA issue.
Let's assume that an employer provides all employees 100 hours of PTO per year and it's a single bucket of leave that is meant to satisfy ESST requirements. Under the FMLA, the employer can force the employee to use that accrued PTO before taking an unpaid FMLA leave.
Effective January 1, all PTO becomes subject to the ESST protections since PTO can generally be used for an employee's personal illness and injury. And per the call today, its DOLI's position that you can't force employees to use their ESST.
Under this situation, could an employer continue the practice of forcing employees to use their PTO before taking an unpaid FMLA leave?
During the presentation, the FMLA question was based on a hypothetical that an employee had a bank of sick leave and you said that it could not be forced since its ESST. My question is more focused on a PTO balance that (1) is being used to meet ESST requirements (per law effective now), or (2) is effectively considered ESST on January 1, even amounts above 80 hours per year.
Thanks,
Scott Blake

Scott D. Blake
Attorney

220 South 6th Street, Suite 2200, Minneapolis, MN 55402
Direct: 612.373.8538|Main: 612.339.6321|Fax: 612.338.0535
SBlake@Felhaber.com
www.felhaber.com

have received it by mistake, please delete it and notify the sender. Thank you.
Debt Collector Communication: This is a communication from a debt collector who is attempting to collect a debt. Any information obtained will be used for that purpose.

Docket No.– 25-9001-40129

Exhibit K6

Comments received after publication of the second Request for Comment

From: Kelly A. Thaemert, CLM
To: RULES, DLI (DLI)
Subject: RE: Rulemaking notice: Earned sick and safe time rule draft available
Date: Monday, March 3, 2025 8:48:22 AM
Attachments: image001.png

To Whom It May Concern,

I understand that a second request for comments was published today. I am writing to add my comments.

As a company who provides more PTO than the ESST policy requires, it seems unnecessary to go through the work of recording ESST vs. PTO. Our PTO policy allows employees to take time off for any reason with notice or without notice. I completely understand the need for ESST for employees with part-time employees or any employee who does not receive PTO. The ESST policy is required for all employers, but I think it makes more sense to apply this policy to the correct employers and not all employers.

I appreciate you listening to my comments.

Sincerely,

KELLY A. THAEMERT, CLM
Firm Administrator
Direct: 952-746-2170
hjlawfirm.com

From: Minnesota Department of Labor and Industry <MNDLI@public.govdelivery.com>
Sent: Monday, March 3, 2025 8:38 AM
To: Kelly A. Thaemert, CLM <kthaemert@hjlawfirm.com>
Subject: Rulemaking notice: Earned sick and safe time rule draft available

[EXTERNAL]

ESST banner

Rulemaking notice: Earned sick and safe time rule draft available

You are receiving this email message because, under the Minnesota Administrative Procedures Act, each Minnesota agency must make reasonable efforts to notify persons or classes of persons who might be affected by the rule being proposed. You are receiving this email message because you have either registered to receive electronic notices related to earned sick and safe time rulemaking or the Department of Labor and Industry has identified you as a person or organization that might be affected by the proposed rules.

Request for comments: Possible rules governing earned sick and safe time, Minnesota Rules, 5200.1200

The Minnesota Department of Labor and Industry (DLI) is publishing a second request for comments to seek information and comments from interested persons or groups regarding the draft earned sick and safe time (ESST) rules available via the link below. DLI is considering rules that would carry out the purposes of the ESST law in Minnesota pursuant to Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448.

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 the employee or their family member has experienced domestic abuse, sexual assault, or stalking. A copy of the request for comments is available in the *State Register* (page 1021).

The rule draft and additional information concerning this rulemaking

proceeding is available on DLI's [rulemaking docket webpage](#).

---

minnesota department of labor and industry

Minnesota Department of Labor and Industry | www.dli.mn.gov
651-284-5005 or 800-342-5354

Unsubscribe

From: Jeff Hokeness
To: RULES, DLI (DLI)
Subject: sick and safe time
Date: Monday, March 3, 2025 8:51:23 AM

Please make this overzealous law apply only to businesses with over 50 employees. The cost of doing business in this state is already too high. Thank you,

Jeff A. Hokeness, MS
Mankato, Mn 56001

From: Jessica Freeseman
To: RULES, DLI (DLI)
Subject: ESST - Regarding Small Business
Date: Monday, March 3, 2025 9:14:29 AM
Attachments: image001.png

Krystle,
I met with my cities representative, Patty, this past summer regarding ESST concerns. We are a small family owned business in Minnetonka. My sister and I are second generation, and I am the first female to sell industrial woodworking equipment in America. I consider myself to be a relatively well educated person – both by academia and the school of hard knocks.

First, in the last round when you guys made the change regarding commission sales people, that was big. Prior to going to the minimum wage requirement, that could have cost me over $75k a year. Personally, my commissioned sales people are all over $100k a year. The idea of paying them an additional $11/hr so they can take time off is really quite ridiculous. First off… why do I need to pay my already well-paid employees to take time off? Secondly, this turns into an accounting nightmare.

Secondly, we are transitioning away from only commission and going to base + commission. It's the only way I can bring on new sales people while still allowing them to pay the bills. We front load the hours. What we have discovered is that many of the younger hires we have tried, blow through their front loaded hours within the first 3 months. After that, they quit. So now I am out additional money. Sadly, we have observed that PTO doesn't seem to matter to employees much these days anyway. If they want the day off, they take it. If they are out of hours, they still take it. Its an employee's market right now. They know they are tough to replace.

Third, the final paragraph regarding excess PTO makes no sense. That needs to be elaborated on. We had a great PTO policy before the ESST requirement came out. Now our PTO policy is just a mess.

Lastly, I would like to see the ESST applicable based on a minimum income. For example, if my employees are making $150k a year… why do I need to do anything other

than their basic 3-5 wks of PTO? If I had hourly employees only making $15/hr, I can see where there is a benefit to the ESST. But at what point do you say that people are living a good life and their typical PTO policy is just fine?

It would be really nice if our government could be ran with more of a business thought process instead of by people whose professional careers have consisted of being yes-men, whiners, or lack business experience outside of the government. Private business is a lot different than government business - - private business seems to have more of their ducks in a row, as we have money and the government always seems to be needing more. Maybe the government should put together a board of 20 industry professionals ranging from small business to corporate, who can help all you lawyers put together these rules. **If the people makes these rules have no experience running a business –** *then they aren't the right people to be writing the rules!*

Thank you for your time in conducting this written comment request and for taking the time to read my review of the ESST laws. If you need any further assistance, please do not hesitate to reach out.

Thank you,
Jessica

Jessica Freeseman

Phone 952-238-8374 **Mobile** 612-799-6059
Web www.woodmachinerysystems.com
Email Jessica@woodmachinerysystems.com
15041 Minnetonka Industrial Rd., Minnetonka, MN 55345

From: ASHLEY WOODS
To: RULES, DLI (DLI)
Subject: Request for Comments Feedback
Date: Tuesday, March 4, 2025 7:40:12 AM
Attachments: image001.png

Dear Krystle Conley,

I'm writing to provide comment on the possible adoption of rules governing Earned Sick and Safe Time ("ESST"), in particular:

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.

As an employer, we need to be able to require staff to use their accrued paid time, before they are absent without pay. If we are unable to require staff to utilize all available accrued time, this results in a practice we sometimes refer to as "stacking", where an employee who is absent for a period of time, unpaid, will then return to work and be absent additional time using paid time-off. This increases the number of absences and as a school district, employee attendance is vital to the success of our students. An increase in staff absences will have a negative impact on our students and create additional hardships for staff who are present and must pick up the additional workload, in an already stressful and understaffed environment.

Not only would this have a negative impact on our students and colleagues of the absentee, but it may also create a hardship for the District when it comes to holding staff accountable for their absenteeism. Under ESST, a staff member cannot be "penalized" for utilizing ESST – no question here. In the proposed ruling, if I'm understanding correctly, it sounds as if a staff member is not protected under the law if they choose not to use their accrued ESST time. If a staff member can choose not to use accrued paid leave before taking unpaid time off, can the staff member be disciplined for taking unpaid time-off, even when they have a balance of accrued paid leave available for use? In other words, an employer cannot require an employee to use ESST and can then discipline an employee (if they have ESST available) for not using it and therefore taking unpaid time off?

Thank you for your time and consideration in this important matter.

Thank you,

Ashley Woods

Human Resources Supervisor

St. Cloud Area School District 742

320-370-8044
ashley.woods@isd742.org
1201 2nd St S, Waite Park, MN 56387
www.isd742.org

Safety – Belonging – Collaboration – Excellence

"The last of human freedoms is to choose one's attitude in any given set of circumstances." – Viktor Frankl

From: Christopher Sonju
To: MN_DLI_ESST; RULES, DLI (DLI)
Subject: question
Date: Thursday, March 6, 2025 9:23:30 AM

Hello - I have a question that has been brough to my attention and would like to get some clarification.

Yesterday at our school, we needed to close due to the weather.....we have a collective bargained contract of 176 school days.....it is agreed upon that if we missed said day (March 5, 2025 in this case)....it would be made up on April 21st.....April 21st was a day that there was no work scheduled.....now that the snow day happened, we will now work on this day (April 21, 2025), per contract.

The question that has come up is whether or not employees can use ESST on yesterday's snow day? Being that this is agreed upon to be made up, I wouldn't think this can happen.....why would an employee get to get paid twice for working once? Doesn't seem correct or right, but would like clarification as I want to follow the law and not violate anything.

Remember these are employees that work a contracted number of days.....not 12 month employees. Seems like most of the ESST language is with 12 month employees in mind. I think there needs to be some clarification with contracted number of days employees.

It has been very difficult to find summer workers due to the fact that these contracted employees can collect unemployment.....thus they don't work. This hurts students as we can't find workers. This would be a recommendation to make changes to help schools out during the summer months.

Thank you. I can be reached at 320-864-2498 if you have any additional questions. Thank you. Chris

Christopher Sonju
Superintendent of Schools
GSL #2859

Follow me on Twitter **@ChrisSonju**

It's a great day to be a Panther!

From: Diaa Tahoun
To: RULES, DLI (DLI)
Subject: Public Feedback on Proposed Earned Sick and Safe Time Rules
Date: Monday, March 10, 2025 1:54:15 PM
Attachments: image001.png
image002.png

Good afternoon,

I don’t think that election judges should get ESST. It’s an extra cost for Cities. I would prefer that reinstate the balance of ESST if someone get rehire within 6 months, is hard to track it.

Diaa Tahoun, MSA, CGFM, CPA| Finance Director (he/him/his)
City of Robbinsdale| 4100 Lakeview Avenue North
ROBBINSDALE MN 55422| USA
Direct ☎ 763-531-1215 | FAX 763-537-7344
dtahoun@robbinsdalemn.gov

From: keithe@iw.net
To: RULES, DLI (DLI)
Subject: Earned safe and sick time.
Date: Monday, March 10, 2025 8:20:22 PM

I saw the comments open on proposed rule changes and I have a comment on the program as a whole. My Wife and I are the Local Owners of a Cold Stone Creamery in Marshall MN.
We have operated the store since opening in 2007. I have completely implemented the program since it became law. I really believe the law needs to be changed that persons under the
Age of 18 be excluded from receiving ESST. 90% of our kids are minors and it just doesn't make sense to include people who are living with parents. They are all full-time students and they
Are not working to pay rent etc. they are mostly working at the parents nudging them to get work experience. And on that subject, I really wish there was a break of some kind for us hiring minors
As we go through a lot of work teaching these kids about work and dealing with people and life! We have truly become good leaders and most of our kids come at 14 or 15 and stay till graduation
And some even come back on college breaks. We provide a great positive experience for them. As far as the rules go, I do have a 44-year-old that this is her job, and I have no problem with the ESST
For her, and she uses it.

As I said before I believe we should look at exempting minors and maybe full-time students from the law under 18 or 21.

Thank you for letting us comment.
Keith Edwards.
Cold Sone Creamery
1220 Susan Dr Ste 1
Marshall, MN. 56258

From: Rob Voshell
To: RULES, DLI (DLI)
Cc: Anna Gruber
Subject: Feedback on Employee Sick and Safe Time (ESST) Rules
Date: Tuesday, March 11, 2025 8:35:38 AM
Attachments: Outlook-Photo.png
Outlook-facebook i.png
Outlook-youtube ic.png

Dear DLI,

On behalf of the City of Sartell, we appreciate the intent behind the Employee Sick and Safe Time (ESST) rules in ensuring workers have access to necessary leave. However, we find that the implementation of these rules imposes unnecessary administrative burdens on cities like ours, which already offer more generous sick leave policies.

Our primary concerns include:

1. **Redundant Administrative Work:** Despite offering a more generous sick leave benefit, we are still required to amend our policies, renegotiate contracts, and implement a new ESST time bank that adds significant administrative time and complexity. This effort diverts resources from other critical municipal functions.

2. **Inflexibility in Implementation:** The one-size-fits-all approach does not account for local governments and organizations that already exceed the ESST requirements. Providing an exemption for entities that meet or exceed the benefits outlined in the ESST rules would reduce redundancy and administrative costs while maintaining worker protections.

3. **Need for Clarity and Simplification:** The rules require substantial education efforts for both HR personnel and employees. Streamlining guidance and allowing greater flexibility for employers who already meet or exceed the benefits would ease the transition.

We urge the Department of Labor to consider adjustments that recognize and accommodate employers who already provide sufficient sick leave, reducing unnecessary administrative burdens while upholding the intent of the law.

Thank you for your time and consideration. We welcome the opportunity to discuss these concerns further.

Sincerely,

Rob

Rob Voshell

Director of Finance & Operations

T: 320-258-7318
Rob.Voshell@sartellmn.com
125 Pinecone Road N, Sartell, MN, 56377

From: Dincau, Shelly J
To: RULES, DLI (DLI)
Cc: Shelly Dincau
Subject: ESST Rules Feedback
Date: Tuesday, March 11, 2025 3:55:02 PM
Attachments: Impact on Operations.docx

Good afternoon,
As a small business owner in the bar and restaurant industry and the current challenges we are currently facing with both attracting and retaining employees, I urge you to consider amending the ESST Rules to include the exemption of small businesses. I have outlined a few of the reasons for consideration in the attached document.

Respectfully,
Shelly Dincau

Britt Lounge Bar & Grill
Tavern in the Bay

CLIFFS

SHELLY DINCAU
Business Support Manager – Plant
P 218.305.3406 F 218.749.5256 shelly.dincau@clevelandcliffs.com

CLEVELAND-CLIFFS INC.
Cleveland-Cliffs Minorca Mine Inc.
5950 Old Highway 53 N., Virginia, MN 55792
P 218.749.5910 clevelandcliffs.com

Tuesday, March 11, 2025

Minnesota Department of Labor and Industry

RE: Earned sick and safe time rulemaking process and feed back

Conditions to Consider and Amend

1. Consideration of the Overall Impact on Small Business. Propose the exemption of small businesses with 20 or fewer full-time employees.

2. Consideration of Impact on Small Business Operations with limited reserves to find and retain qualified employees. Small businesses have been struggling to find employees. However, with the limited employee base that we currently have an employee's absenteeism adversely impacts service and daily operations of the business. With the implementation of the ESST laws, which supersede the company's sickness policy, the business can no longer request the employee to find back up for their missed shift(s). This puts no accountability on the employee and opens the door for abuse of the ESST allowance. For example, it has been our experience when an employee is a cook and their assigned sole responsibility is in the kitchen and there is no back-up assigned or available, even a single day of sick leave adversely impacts service as well as full operations of the business including but not limited to shuttering the business for the extent of absence. Recommendations are to train others in that capacity but that is not always an option because of the level of employees that the small business has. Not because they do not want to hire more employees, but they simply cannot get employees.

3. Consideration of Small Business Scheduling Challenges: Managing employee absences due to illness or family care needs can disrupt scheduling because of limited options due to staff availability and require adjustments to staffing levels which are impacted by the deficiency of people available or wanting to work thus causing irreparable and unrecoverable costs to the business.

4. Increased Unrecoverable Costs that Impact Small Businesses: Employers need to factor in the cost of providing paid sick leave, in which if a replacement worker is available the small business has just doubled their labor costs. Increased labor, taxes and related expenses that are incurred are extremely difficult to absorb because of the already minimal margin due to increased electricity, natural gas, insurances, supplies and food costs. These costs are considered unrecoverable and negatively impact the business' working capital thus forcing closures of small businesses.

From: Lisa Stracek
To: RULES, DLI (DLI)
Subject: Comments on Draft ESST Rules
Date: Wednesday, March 12, 2025 6:45:10 AM

To Whom It May Concern,

I am writing to express my concerns regarding the proposed rules governing Earned Sick and Safe Time (ESST) in Minnesota. While I understand the intent behind the law, I believe that certain aspects of the proposed rules could have unintended negative consequences, particularly for small businesses. Below are my specific comments:

1. **Refund of Unused ESST to Employers:**
   I strongly believe that any paid leave provided by employers should be refundable if not used by the employee. If an employer is required to provide this benefit and it is not used by the employee, the employer should be able to reclaim the funds. Failing to do so risks turning this paid leave into a "social tax" that takes money from employers without a direct return. Without a mechanism for refunding unused ESST, this could essentially become a de facto tax on business owners, particularly small businesses, and create an unjust financial burden. The current proposal does not adequately address this issue, and I urge the Department to consider a system where unused ESST funds are refunded to employers, ensuring the funds are used fairly.
2. **Exemption for Employers with Fewer Than 25 Employees:**
   The proposed rules should not mandate that employers with fewer than 25 employees be subject to these ESST requirements. Small businesses already face numerous regulatory challenges and are struggling to keep up with the ever-increasing rules and regulations in Minnesota. Imposing additional administrative burdens for small businesses that can barely afford them is unfair. These businesses are vital to the economy and deserve relief from excessive state regulations. Rather than imposing these requirements, I recommend that the state provide a more lenient approach or, if necessary, offer support such as a free HR representative to assist small employers with these regulations. This would ensure that small businesses are not disproportionately burdened by this rule, helping them stay afloat without unnecessary government interference.
3. **Allocation of Funds and Restrictions on Use:**
   All funds collected from employers that are not refunded should not be used for any additional social programs or government initiatives. There should be a cap on the amount the government can take from each employer, and any funds that are not returned to employers should be rolled over to the next year's ESST contributions. The money that is

taken from businesses should not be diverted for other unrelated programs or government operations. Specifically, if the government needs to create a new office or hire new employees to manage this fund, those costs should not be paid from the funds contributed by employers. These funds belong to the employers, and it is inappropriate to use them to support broader governmental activities or social programs.

In conclusion, I urge the Department to reconsider the impact of these proposed rules on small businesses and to take a more balanced approach that considers the financial challenges faced by employers in Minnesota. I believe we have been able to support employees' well-being, I fear with government oversight this rule has already caused an overwhelming burden on businesses and will continue to rise with this excessive regulation.

Thank you for considering my comments. I look forward to seeing how the Department moves forward in addressing these concerns.

Sincerely,

From: Garret Hilgendorf
To: RULES, DLI (DLI)
Subject: Comments on Proposed Rules Governing Earned Sick and Safe Time (ESST), Revisor's ID Number R-04877
Date: Friday, March 14, 2025 11:49:39 AM

Dear Ms. Conley,

I appreciate the opportunity to provide comments on the proposed rules governing Earned Sick and Safe Time (ESST) in Minnesota. As an Ambulatory Surgical Center (ASC) with fewer than 60 employees, I recognize the importance of ensuring that our staff have access to paid leave for health and safety reasons while also considering the operational and financial impact on our facility.

1. Cost Considerations for Small Healthcare Facilities
ASCs operate in a highly regulated and resource-sensitive environment, where compliance with additional mandates can impose significant financial and administrative burdens. If the cost of compliance is expected to exceed $25,000 in the first year, this could impact staffing, patient care, and operational viability. It would be beneficial for the Department to consider:

- Financial assistance or reimbursement options for small healthcare providers to offset costs.
- A phased implementation approach tailored to healthcare facilities.
- Clearer guidance on how these rules align with existing healthcare labor laws.

2. Impact on Scheduling and Patient Care
Unlike other industries, ASCs must maintain strict staffing levels to ensure patient safety and compliance with federal and state healthcare regulations. The implementation of ESST may pose challenges in:

- Maintaining sufficient clinical and support staff coverage during unexpected absences.
- Managing increased costs of temporary or on-call staffing to meet regulatory staffing requirements.
- Addressing potential delays in patient care due to staffing shortages.

3. Cumulative Effect with Other Healthcare Regulations
ASCs are already subject to various federal and state labor laws, including OSHA regulations, the Family and Medical Leave Act (FMLA), and Minnesota's existing paid sick leave policies. It would be helpful for the Department to assess:

- How these rules interact with current healthcare labor laws to prevent duplication.

- Whether accommodations or exemptions could be made for highly regulated healthcare facilities.

4. Alternative Methods to Achieve ESST Goals in Healthcare

While ensuring employees have access to ESST is crucial, there may be less disruptive ways to achieve the same objectives in a healthcare setting, such as:

- Allowing ASCs to implement flexible PTO policies that meet or exceed ESST requirements. Many across the state already have flexible PTO policies that meet or exceed the ESST requirements.
- Offering industry-specific compliance pathways that consider patient care needs.
- Providing exemptions or adjustments for critical healthcare providers facing operational challenges.
-

I appreciate the Department's efforts to gather feedback and consider the perspectives of employers, employees, and healthcare providers.

Thank you for your time and consideration of these comments. I look forward to further developments in the rulemaking process.

Sincerely,

Garret Hilgendorf, MBA
Mankato Surgery Center | Administrator
1411 Premier Drive
Mankato, MN 56001
507.386.5531
Fax: 507.388.7759
ghilgendorf@mankatosurgeryctr.com

From:	Jenny Paulsrud
To:	RULES, DLI (DLI)
Subject:	Request for Comments: Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200
Date:	Friday, March 14, 2025 1:18:26 PM
Attachments:	image001.png REQUEST FOR COMMENTS LETTER-Rules Governing ESST-Minnesota Rules- 5200.1200- Revisor's ID Number R-04877- 03.14.25.pdf MNDLI ESST Application to Other Paid Time Off Provision- Bernie Perryman Letter.pdf

Good Afternoon Krystle,
I hope this email finds you well. I am writing regarding the Request for Comments: Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules 5200.1200. For ease of review, I have attached my letter as well as including the text below.
Additionally, I would like to note that on January 10, 2025, I sent letters/emails to my local senators and representatives (listed below). I have attached a copy of one of the correspondence letters, which provides further context and supports my concerns related to Minnesota Statute 5200.1207.

- Bernie Perryman- rep.bernie.perryman@house.mn.gov
- Dan Wolgamott- rep.dan.wolgamott@house.mn.gov
- Lisa Demuth- rep.lisa.demuth@house.mn
- Tim O'Driscoll- rep.tim.odriscoll@house.mn.gov
- Aric Putnam- sen.aric.putnam@senate.mn
- Jeff Howe- sen.jeff.howe@senate.mn

Please let me know if you require any further information.
I appreciate your time!

Letter: Request for Comments: Possible rules governing earned sick and safe time, Minnesota Rules, 5200.1200

Dear Krystle Conley,

I am reaching out to express my deep concerns regarding the implementation of Minnesota Statute 5200.1207: More Generous Sick and Safe Time (ESST) Policies. While I support efforts to protect employees' well-being, this provision places undue administrative and financial burdens on employers, particularly those who already offer generous paid time off (PTO) policies.

The original ESST law was a positive step toward ensuring Minnesotans have access to earned time off without fear of penalties or termination. However, the 5200.1207 amendment goes too far, imposing additional complexities on businesses already striving to do the right thing.

Key Concerns:

1. Unnecessary Compliance Burdens on Employers

Employers offering PTO above ESST minimums must now track and regulate PTO usage under ESST-specific requirements, including notice, documentation, anti-retaliation, and replacement worker provisions. This duplicative oversight increases administrative costs and creates confusion for HR teams, employers, and employees alike.

For small businesses (fewer than 50 employees), the cost of compliance with 5200.1207 could easily exceed $25,000 in the first year, including administrative time, compliance audits, tracking system updates, and legal consultation. Many small businesses may struggle to absorb these costs, leading to difficult operational decisions, noncompliance risks, or even business closures.

For medium-sized employers like ours, compliance will require further automation, process streamlining, and potential staffing reductions. Most businesses do not have “extra” employees to cover excessive, unregulated ESST absences. Without changes to 5200.1207, businesses will struggle with workforce unpredictability, putting customer service, operations, and profitability at risk.

2. Lack of Uniform ESST Implementation Across Employers

Before adding more restrictions and requirements under 5200.1207, the state should first ensure the original ESST law is properly implemented and enforced. Many employers have simply relabeled their existing PTO policies as “ESST-compliant” without meaningful changes or tracking mechanisms.

If the intent is truly to provide fair, protected leave, the focus should be on holding businesses accountable to existing regulations before layering on near-impossible administrative burdens on those already in compliance.

3. Penalizing Employers Who Offer Above-Minimum PTO

Many employers, including us, provide PTO, bereavement leave, and maternity/paternity leave that far exceed ESST requirements. By applying ESST compliance rules to all paid time off, the law discourages employer generosity.

If 5200.1207 remains enforceable, we will be forced to reduce or eliminate certain types of paid leave to avoid double-dipping of benefits. Instead of incentivizing better benefits, this law will likely push employers to limit PTO to ESST minimums—harming employees rather than helping them.

4. Confusing and Retroactive Policy Implementation

The provision that PTO accrued before December 31, 2023, follows different rules than PTO accrued after January 1, 2024, creates record-keeping challenges and increases the likelihood of errors and disputes.

Additionally, when combined with the upcoming Minnesota Paid Leave Law, this rule adds excessive regulatory and administrative burdens on businesses that already provide paid leave. The unintended consequence? Employers may reduce overall benefits to align strictly with ESST minimums rather than continuing to offer more flexible and generous PTO structures.

5. Negative Operational Impact

Our organization employs 200 individuals in Central Minnesota, but we have been forced to continue expanding operations in Las Vegas, Nevada, due to Minnesota's increasing regulatory costs and complexities—including ESST and the impending Minnesota Paid Leave law.

To illustrate the real impact of 5200.1207, consider an example:

Employee "Bob" Profile:

- Full-Time Collections Specialist, 8 years at PCI
- Earning $26.00/hour
- PTO Accrual: 120 hours (Max Rollover: 220 hours)
- ESST Accrual: 48 hours (Max Rollover: 80 hours)
- Additional Benefits: Bereavement Leave (3 days per family member), Maternity/Paternity Leave (10 days)
- Note: the above does not include other state of federal mandated paid time such as Jury Duty or our company-paid Short Term/Long-Term Disability.

Under 5200.1207, Bob could take up to 404 hours of paid time off (10 weeks), with no employer discretion to deny requests or ability to request medical document unless he is absent for 3+ consecutive days.

This amendment jeopardizes fairness for employees who manage their time responsibly while destabilizing business operations. Without the ability to reasonably regulate PTO usage, employers face unsustainable workforce gaps, forcing cost-cutting measures such as automation or staffing reductions.

Minnesota Statute 5200.1207 forces businesses into an unsustainable position—where generous paid leave policies are depleted without oversight or operational flexibility.

6. Employers Should Be Encouraged—Not Penalized—for Generosity

Employers who have acted in good faith should not be penalized for offering PTO benefits exceeding ESST requirements.

A more balanced approach would be to exempt employers who already provide PTO

benefits meeting or exceeding ESST standards and can demonstrate compliance. This would allow businesses to continue offering competitive benefits while maintaining compliance without excessive administrative duplication.

Call to Action:

I strongly urge you to reconsider and overturn Minnesota Statute 5200.1207 or, at the very least, substantially amend it to balance employee protections with employer feasibility for businesses of all sizes.

As an HR professional with 20+ years of experience, I have always been an employee advocate and believed Minnesota has historically balanced the needs of both employers and employees. However, this amendment removes that balance entirely imposing rigid, unsustainable mandates on businesses that have already been doing the right thing.

If 5200.1207 is enforced, it will force employers to modify paid leave policies, increase automation, and reduce overall headcount to sustain profitability—ultimately harming employees rather than supporting them. Not all businesses will survive this burden if compliance remains unchanged.

I welcome the opportunity to discuss this issue further and provide additional employer insights. Please feel free to contact me at Jenny.Paulsrud@preferredcredit.com or 612-840-3205.

Thank you for your time and attention to this critical matter.

Jenny Paulsrud
Vice President of HR & Organizational Development

PHONE: Mobile (preferred):612-840-3205. Work:320-202-7033
EMAIL: Jenny.Paulsrud@preferredcredit.com
ADDRESS: 628 Roosevelt Road St. Cloud, MN 56301

Connect with me on LinkedIn

Jenny Paulsrud, Vice President of Human Resources

Preferred Credit, Inc.- (PCI)

628 Roosevelt Rd

St. Cloud, MN 56301

Jenny.Paulsrud@preferredcredit.com

March 14, 2025

Krystle Conley, Rulemaking Coordinator

Office of General Counsel

443 Lafayette Road North

St. Paul, MN 55155

dli.rules@state.mn.us

Dear Krystle Conley,

I am writing to express my deep concerns regarding the implementation of Minnesota Statute 5200.1207: More Generous Sick and Safe Time (ESST) Policies. While I support efforts to protect employees' well-being, this provision places undue administrative and financial burdens on employers, particularly those who already offer generous paid time off (PTO) policies.

The original ESST law was a positive step toward ensuring Minnesotans have access to earned time off without fear of penalties or termination. However, the 5200.1207 amendment goes too far, imposing additional complexities on businesses already striving to do the right thing.

Key Concerns

1. Unnecessary Compliance Burdens on Employers

Employers offering PTO above ESST minimums must now track and regulate PTO usage under ESST-specific requirements, including notice, documentation, anti-retaliation, and replacement worker provisions. This duplicative oversight increases administrative costs and creates confusion for HR teams, employers, and employees alike.

For small businesses (fewer than 50 employees), the cost of compliance with 5200.1207 could easily exceed $25,000 in the first year, including administrative time, compliance audits, tracking system updates, and legal consultation. Many small businesses may struggle to absorb these costs, leading to difficult operational decisions, noncompliance risks, or even business closures.

For medium-sized employers like ours, compliance will require further automation, process streamlining, and potential staffing reductions. Most businesses do not have "extra" employees to cover excessive, unregulated ESST absences. Without changes to 5200.1207, businesses will struggle with workforce unpredictability, putting customer service, operations, and profitability at risk.

2. Lack of Uniform ESST Implementation Across Employers

Before adding more restrictions and requirements under 5200.1207, the state should first ensure the original ESST law is properly implemented and enforced. Many employers have simply relabeled their existing PTO policies as “ESST-compliant” without meaningful changes or tracking mechanisms.

If the intent is truly to provide fair, protected leave, the focus should be on holding businesses accountable to existing regulations before layering on near-impossible administrative burdens on those already in compliance.

3. Penalizing Employers Who Offer Above-Minimum PTO

Many employers, including us, provide PTO, bereavement leave, and maternity/paternity leave that far exceed ESST requirements. By applying ESST compliance rules to all paid time off, the law discourages employer generosity.

If 5200.1207 remains enforceable, we will be forced to reduce or eliminate certain types of paid leave to avoid double-dipping of benefits. Instead of incentivizing better benefits, this law will likely push employers to limit PTO to ESST minimums—harming employees rather than helping them.

4. Confusing and Retroactive Policy Implementation

The provision that PTO accrued before December 31, 2023, follows different rules than PTO accrued after January 1, 2024, creates record-keeping challenges and increases the likelihood of errors and disputes.

Additionally, when combined with the upcoming Minnesota Paid Leave Law, this rule adds excessive regulatory and administrative burdens on businesses that already provide paid leave. The unintended consequence? Employers may reduce overall benefits to align strictly with ESST minimums rather than continuing to offer more flexible and generous PTO structures.

5. Negative Operational Impact

Our organization employs 200 individuals in Central Minnesota, but we have been forced to continue expanding operations in Las Vegas, Nevada, due to Minnesota’s increasing regulatory costs and complexities—including ESST and the impending Minnesota Paid Leave law.

To illustrate the real impact of 5200.1207, consider an example:

Employee “Bob” Profile:

- Full-Time Collections Specialist, 8 years at PCI
- Earning $26.00/hour
- PTO Accrual: 120 hours (Max Rollover: 220 hours)
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This amendment jeopardizes fairness for employees who manage their time responsibly while destabilizing business operations. Without the ability to reasonably regulate PTO usage, employers face unsustainable workforce gaps, forcing cost-cutting measures such as automation or staffing reductions.

Minnesota Statute 5200.1207 forces businesses into an unsustainable position—where generous paid leave policies are depleted without oversight or operational flexibility.

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Employers who have acted in good faith should not be penalized for offering PTO benefits exceeding ESST requirements.

A more balanced approach would be to exempt employers who already provide PTO benefits meeting or exceeding ESST standards and can demonstrate compliance. This would allow businesses to continue offering competitive benefits while maintaining compliance without excessive administrative duplication.

Call to Action

I strongly urge you to reconsider and overturn Minnesota Statute 5200.1207 or, at the very least, substantially amend it to balance employee protections with employer feasibility for businesses of all sizes.

As an HR professional with 20+ years of experience, I have always been an employee advocate and believed Minnesota has historically balanced the needs of both employers and employees. However, this amendment removes that balance entirely imposing rigid, unsustainable mandates on businesses that have already been doing the right thing.

If 5200.1207 is enforced, it will force employers to modify paid leave policies, increase automation, and reduce overall headcount to sustain profitability—ultimately harming employees rather than supporting them. Not all businesses will survive this burden if compliance remains unchanged.

I welcome the opportunity to discuss this issue further and provide additional employer insights. Please feel free to contact me at Jenny.Paulsrud@preferredcredit.com or 612-840-3205.

Thank you for your time and attention to this critical matter.

Sincerely,

Jenny Paulsrud

Jenny Paulsrud

pci | Your Partner In Success

January 10, 2025

Bernie Perryman
Representative
321 State Office Building
St. Paul, MN 55155

Dear Bernie Perryman,

I am writing to express my deep concerns regarding the implementation of the Earned Sick and Safe Time (ESST) law's provision related to the application of its requirements to other paid time off (PTO). Specifically, the provision mandates that any PTO or other paid leave exceeding the ESST minimum must adhere to the ESST's extensive requirements when used for ESST-qualifying purposes.

While I support efforts to protect employees' well-being, this provision places undue administrative and financial burdens on employers, particularly those like us, who already offer generous PTO policies. As currently structured, the requirement undermines employer flexibility and adds unnecessary complexity to workforce management, which could ultimately harm both businesses and employees.

Key Concerns:

Administrative Complexity: Employers offering PTO above the ESST minimum will be forced to track and regulate PTO usage according to the ESST framework, including notice, documentation, anti-retaliation, and replacement worker requirements. This duplicative regulatory oversight significantly increases administrative costs and creates confusion for HR teams, employers, and employees alike.

Disincentive for Generous PTO Policies: Many employers, including us, provide PTO far exceeding the ESST requirements to attract and retain talent. By extending ESST compliance requirements to this additional PTO, the law disincentivizes such generosity. Employers may opt to align PTO policies strictly with ESST minimums, reducing flexibility for employees and limiting their overall benefits.

Retroactive Application Confusion: The stipulation that PTO accrued on or before December 31, 2023, operates under different rules than PTO accrued after January 1, 2024, further complicates compliance. This split system creates unnecessary record-keeping challenges, increasing the likelihood of inadvertent errors and disputes.

Burden on Small and Medium-Sized Businesses: For smaller employers, these additional compliance obligations may strain already limited resources, potentially impacting their ability to compete in the labor market.

BBB ACCREDITED BUSINESS
Preferred Credit Inc.
628 Roosevelt Road
St. Cloud, MN 56301
www.preferredcredit.com

Operational Impact: Our organization employs 200 individuals in Central Minnesota. However, we have felt forced to continue expanding our operations in Las Vegas, Nevada, due to the mounting administrative costs and complexities associated with Minnesota's newer laws and regulations, including this ESST provision and the impending Minnesota Paid Leave law. While Minnesota is our home, the increasing regulatory burdens are making it increasingly challenging to sustain and grow our operations here.

The "ESST Application to Other Paid Time Off" provision (Earned sick and safe time (ESST) law changes | Minnesota Department of Labor and Industry), effective January 1, 2025, will inadvertently harm both employers and employees by creating rigidity in PTO policies and discouraging above-minimum benefits. I urge you to reconsider and work to overturn or amend this aspect of the ESST law to balance employee protections with employer feasibility.

Employers who already exceed minimum requirements should not be penalized for their goodwill. A more collaborative approach would allow businesses to continue providing generous PTO policies while meeting the law's intent to ensure fair and equitable treatment of employees.

Thank you for your attention to this critical matter. While this letter provides only a brief representation of my voice and our concerns, I welcome the opportunity to discuss this issue further and share additional insights from an employer's perspective. Please feel free to contact me at Jenny.Paulsrud@preferredcredit.com or 612-840-3205.

Sincerely,

Jenny Paulsrud
Vice President of Human Resources
Preferred Credit, Inc.

Preferred Credit Inc.
628 Roosevelt Road
St. Cloud, MN 56301

www.preferredcredit.com

From: Cory Genelin
To: RULES, DLI (DLI)
Subject: Public Comment re: Proposed Rule 5200.1200
Date: Saturday, March 15, 2025 11:04:49 AM

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Minnesota Department of Labor and Industry
Email: dli.rules@state.mn.us

Dear Ms. Conley,

I am writing on behalf of the Minnesota Society for Human Resource Management (MN SHRM) in my capacity as MN SHRM's Legislative Director. MN SHRM educates, and advocates for, human resource professionals throughout Minnesota. MN SHRM is neither pro-employer, nor employee; MN SHRM is pro employment.

I am writing to comment on the Department of Labor and Industry's proposed rules governing earned sick and safe time, Minnesota Rules, 5200.1200. I have read the proposed rule and I am glad to see that in 5200.1206, DOLI is considering rules to deal with possible abuse of this mandated benefit. While these cases are rare, they do happen, and they are a harm to both employers and employees who abide by the system honestly. I see three points of improvement on the proposed rule.

First, the title of the section itself could cause confusion. While an employer may be concerned about misuse, in the scenario the rule envisions, the employer won't really know if misuse is occurring or not. So I suggest something like "suspected" misuse or, to use more of DOLI's language, "a pattern suggesting misuse."

Second, the rule doesn't say what an employer can do if the employee fails to provide the documentation or provides false information. I think that should be remedied.

Finally, I would like to address another situation, which, while rare, does happen and requires employer attention and leads to serious displeasure from the non-abusing employees.

I suggest that 5200.1206 MISUSE OF EARNED SICK AND SAFE TIME be amended as follows:

> Subpart 2. Pattern ~~of~~ Suggesting Misuse. Notwithstanding the timeline provided in Minnesota Statutes, section 181.9447, subdivision 3, paragraph (a), an employer is permitted to ~~demand~~ require reasonable documentation from an employee when there is a pattern ~~of~~ suggesting misuse by the employee. A pattern ~~of~~ suggesting misuse occurs when, for a claimed unforeseeable use

pursuant to Minnesota Statutes, section 181.9447, subdivision 2: A. an employee routinely uses earned sick and safe time on their scheduled work day immediately before or after a weekend, vacation, or holiday; or B. an employee routinely uses increments of earned sick and safe time of less than 30 minutes at the start of a scheduled shift; or C the employer observes the employee engaging in, or admitting to, activities incompatible with the employee's stated reason for using earned sick and safe time. An employer's ~~demand for~~ requirement of reasonable documentation must be in accordance with Minnesota Statutes, section 181.9447, subdivision 3, paragraphs (b) to (f). An employer that requests reasonable documentation in accordance with this subpart is not retaliating against an employee pursuant to Minnesota Statutes, section 181.9447, subdivision 6. An employer may deny earned sick and safe time to any such employee who fails to provide the required documentation. An employer may take adverse action against an employee who uses earned sick and safe time under false pretenses, if that employee did not in fact qualify for earned sick and safe time.

Thank you for considering my comment. Please feel free to reach out with any questions you may have.

Sincerely,

Cory Genelin
Legislative Director
MN SHRM

From: Megan Wik
To: RULES, DLI (DLI)
Subject: ESST Comments
Date: Monday, March 17, 2025 12:36:20 PM

Hello,

I work for a union contractor with an average of 35-40 employees, 25-30 which are union, and have run into some instances over the last year with ESST. Here are my comments on what we've seen in regards to the cost of complying with this ESST rule.

- We already pay into the union employee's vacation fund and are now having to pay them for ESST time as well as their health care benefit. In 2024 we spent $over $25,000 with only 11 of our union employees using a portion of what they earned of the ESST hours in 2024. This amount is made up of their wages, and the health care cost we are paying to the union for each ESST hour claimed.

- We've seen our union employees use their time as follows:
  - For bereavement leave
  - For a "mental break" day
  - Using ESST time in the morning for appointments and then working their shift late into the evening to pass the time where they will start receiving overtime pay for their service calls.
  - Taking an entire day off for their or a family member's doctor appointments.
  - Using it for "no day care" days, and then when questioned, telling us their child was "actually" sick.

I feel this law has placed a financial hardship on our small business, and if all our union employees would have taken their full time earned over the last year, it would have been a true burden at times to pay this out. We are already paying high wages and benefits to these workers and have had to increase our labor rates to cover this new law. We are competing against out of state contractors at times that don't have this added expense and are being priced out of an already tight market.

From: Jesse Kook
To: RULES, DLI (DLI)
Subject: Comments Proposed Rules on Minnesota Earned Sick and Safe Time
Date: Friday, March 21, 2025 8:43:06 AM

Ms. Conley,

I'm respectfully submitting comments regarding the proposed rules regarding Minnesota Earned Sick and Safe Time. These comments are based on my background with administering ESST since it's inception as well as my experience as a Human Resources profession for the past 18 years. Comments Proposed Rules on Minnesota Earned Sick and Safe Time. Please note that these comments are coming from the perspective of an employer who's PTO policies prior to the implementation of ESST were already more generous and already covered the requirements of ESST.

Subp. 3. Rehire. Most employers who cover ESST within their PTO policy will pay out all accrued but not used PTO upon employment termination. If that employee is rehired, and an employer is required to reinstate up to 80 hours of ESST, the employer would essentially be providing this ESST twice to the employee. This should be modified to exempt employers who pay out ESST balances upon termination if the employer's PTO policy covers accrual requirements.

5200.1205 Employee Use, Subpart 1. Required Use. Employers should be allowed to require employees to use ESST if ESST is covered under the employer's PTO policy, and if the employer's PTO policy states they will pay out all accrued but unused PTO upon termination. Since accrued but not used ESST is not required to be paid out upon termination, an employee electing to not use ESST is essentially, forfeiting their own benefit of paid time off when out for a qualifying reason. However, if an employer's PTO policy states that all accrued but unused PTO will be paid out upon termination, an employee would be essentially "banking" time to be paid out to them upon termination since employers who include ESST as part of their PTO policy are not allowed to differentiate between the two in their payout and application. Most employers pay out PTO balances upon termination. And most employers require employees to use PTO before they take unpaid time off. Prohibiting employers from requiring employees to use PTO may have an effect of forcing employers to switch their PTO policies to "use or loose" and/or, not payout any PTO balances upon termination, which would be a detriment, not a benefit to employees. Employers who provide PTO that meets or exceeds the ESST requirements will be forced to revamp their benefits, that are already more lucrative than the ESST requirements if this rule goes into effect. This also is problematic for salaried employees as employers are not allowed to prorate salaried employee's salary.

Sincerely,

JESSE KOOK
Human Resources Director

p: 651-349-5337
f: 651-381-1915
w: myservion.com

From: Kristie Moldenhauer
To: RULES, DLI (DLI)
Subject: Proposed Permanent Rules Relating to Earned Sick and Safe Time - Comments
Date: Friday, March 21, 2025 10:22:06 AM
Attachments: image002.png

Thank you for the opportunity to provide comment on the Proposed Permanent Rules Relating to Earned Sick and Safe Time.

Our organization has long granted new full time employees 120 hours of PTO to be used in whatever way the employee wishes to use their time away from work. When ESST was implemented, since our time off policy was more generous than the required accrual amount of ESST, the decision was made to have ESST be part of the PTO allowance. All notifications were provided to employees to inform them of ESST.

Since our PTO policy is more generous, it is our understanding that we must allow employees to use the entirety of their PTO allowance for absences from work due to personal illness or injury following the standards and requirements of ESST. The issue has become that employees who seek to have a day off without notice, will call in indicating they are sick and the day was not foreseeable. This has resulted in a number of employees who call in repeatedly on a Monday or Friday, or day before or after a holiday. This, obviously, causes staffing shortages in certain areas.

We fully support that employees have the amount of time accrued under ESST for qualifying purposes and can take that time without prior notice and we fully support allowing employees to use their PTO as needed. However, when the entire amount of PTO is used without prior notice for illness and there can be no counseling or discipline, managers have great difficulty in managing schedules and maintaining the morale of the department.

The paragraph that I am referring to is (current statute):

> **181.9448 EFFECT ON OTHER LAW OR POLICY.**
> §
> Subdivision 1. **Effect on more generous sick and safe time policies.**
>
> (a) Nothing in sections 181.9445 to 181.9448 shall be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements

provided in sections 181.9445 to 181.9448. All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446.

Under the new Proposed Rules, this may be remedied by:

> 5200.1205 Subp. **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 and safe time for an absence from work.

However, this seems to be contradicted under the last paragraph of the proposed Rulemaking which states**:**

> **5200.1207 MORE GENEROUS SICK AND SAFE TIME POLICIES**. Excess paid time off and other paid leave made available to a employee by an employer pursuant to 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 being used for a qualifying purpose.

If I understand this correctly, it appears that all of the more generous PTO, including the amount that exceeds the ESST accrual, is subject to the provisions of ESST and an employee cannot be counseled or disciplined for Misuse.

I respectfully request that 5200.1207 be removed from the proposed rulemaking and that 5200.1205 apply to more generous PTO. If an employee is using ESST, then protections apply. If an employee is not using ESST, then the protections do not apply regardless of whether or not an employee has a more generous PTO accrual.

Thank you for your consideration.

Kristie Moldenhauer, SPHR, SHRM-SCP | Director of Human Resources

Citizens Independent Bank

5000 West 36th St
St. Louis Park, MN 55416
952-915-8549

From: Joni Ludwig
To: RULES, DLI (DLI)
Subject: ESST as of 1/1/25
Date: Friday, March 21, 2025 11:59:34 AM
Attachments: image001.png

Hello, just griping a bit. We had a generous PTO plan that worked great and employees are happy with. We chose not to transition to individual ESST and Vacation policies as employees were happy and they would have perceived any changes as we were "removing a benefit", i.e. less Vacation days. The reason we transitioned to PTO years ago was to make it fair for those employees who never use sick time. With the new changes as of 1/1/25....it's crippling and I'm finding that to comply it would be best to have separate policies, hence resulting unhappy employees.

Point to consider...."Why fix what works"! These rules are not one size fits all.

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-

Joni Ludwig
VP | Human Resources
www.star.bank | joni.ludwig@star.bank
DIRECT: 320.558.8006 |OFFICE: 320.963.3161
100 State Hwy 55 E, Maple Lake, MN 55358

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From: Scott Andrews
To: RULES, DLI (DLI)
Subject: ESST proposed rule feedback
Date: Tuesday, March 25, 2025 9:00:08 AM

Good morning,

I just read the proposed rule changes to the ESST law. As an employer, I am in favor of the rules that mention patterns of misuse. The times you have described (short increments at the beginning of shifts or days off before/after weekends or holidays) are the most likely to be abused. At our location (and many, I suspect), ESST is not a separate thing, but all of our PTO. For that reason, we're not concerned about people using PTO/ESST to take longer weekends or holidays if they give notice—we understand that they just want some time off. Is there any way to distinguish between requests made in advance or on short notice? Also, will there be any guidance provided about what constitutes a pattern of late arrivals? Or will that be left open for interpretation?

Again, thank you for considering adding this portion to the rules—without it, an employee could show up to work 15-30 minutes late every shift with no consequences as long as they expend a little PTO.
Thanks,
--Scott

Scott Andrews
Human Resources Coordinator
Scott.Andrews@BrenkBrothers.com
Brenk Brothers Inc. **Phone:** 763.398.6166
7490 Central Ave
Fridley, MN 55432

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From: wdarock@aol.com
To: RULES, DLI (DLI)
Subject: ESST
Date: Wednesday, March 26, 2025 11:59:47 AM
Attachments: Letter to DLI 03262025.pdf

March 26, 2025

From:

William D. Arockiasamy
Asst. Executive Director
Enkrateia House Of Hope
240 E. 5th Street
Waconia, MN 55387

To:

Ms. Krystle Conley
Rulemaking Coordinator
Office of the general Council
443 Lafayette Road North
St. Paul, MN 55155

Re: ESST

Dear Ms. Conley:

Attached please see my letter of request

Thanks.

Bill Arockiasamy
952 240 7121

House of Hope

Providing a Home, Building a Future

March 26, 2025

From:

William D. Arockiasamy
Asst. Executive Director
Enkrateia House Of Hope
240 E. 5th Street
Waconia, MN 55387

To:

Ms. Krystle Conley
Rulemaking Coordinator
Office of the General Council
MN Dept of Labor & Industry
443 Lafayette Road North
St. Paul, MN 55155

Re: ESST

Dear Ms. Conley:

Enkrateia House of Hope (EHOH), was organized as a Charitable Non-profit Corporation in 2020 in response to several phone calls my wife received from various entities, asking for a temporary home for young homeless pregnant women who didn't have a safe place to stay during their pregnancy and after the birth of their babies.

After realizing the dire need that various Pregnancy Care Centers cannot offer, my wife and I decided to rent a house for this purpose with our funds. Hearing about the undertaking, friends, family, acquaintances and the community members came forward with their support for the cause and Enkrateia House of Hope was formed. We are a registered 501c3 Charitable Non-profit organization.

We follow a coordinated entry process for admission. The major requirement is that applicants should have an innate desire to work or go to school. Our goal is to work with these women to make them self-sufficient. We provide room and board free of charge for up to 18 months, provided the house rules are followed. The house can accommodate three women and their babies at a time.

Our original plan was to run this service solely with volunteers. My wife, Dorothy Arockiasamy, a retired scientist, is the founder the founder and Executive Director. She takes care of women's needs with the help of volunteers. And I maintain the rented house (facility) and take care of the financial matters. At the end of the year, depending on the financial situation of the entity, I get reimbursed as much as possible. I am a self-employed Forensic Structural Engineer, and I will be 80 years old in a few months. I am still working part-time.

P.O. Box 795, St. Bonifacius, MN 55375 . www.enkrateiahouseofhope.org

Most of the services and provisions are offered to Guests by unpaid volunteers. Dorothy was staying at EHOH as a volunteer full-time House Mother (without any pay) till 2023 March. In 2023, she suffered a major Heart Attack and was hospitalized twice due to complications from surgery. Thus, we needed to hire a part-time employee who worked 4 days a week since it was difficult to find volunteers for the full weekdays. This employee's main role is to provide a motherly presence in the house and help the young mothers. She helps with the preparation of meals working with Guests (the displaced expectant mothers under our care are called Guests) and enjoys free lunch on her days of work.

Now, with the new ESST requirements, it has become financially difficult to have this paid employee for 4 days a week working 32 hrs. We do not have any grants or public assistance to meet our expenses for maintaining this home for the needy. We are forced to reduce the number of workdays from 4 to 3 for this part-time employee. New ESST rules are imposing a financial burden on our organization's finances.

We have received 133 calls in the last 4 years asking for this help and have helped two or three of those in various ways including schooling, books, computers, the fee for certification exams, finding jobs and helping them to find their own housing with the support from other entities. Currently, we have 2 Guests living at Enkrateia home, one with a 2-week-old and second with a 2-month-old baby. One mother is enrolled in an undergraduate program and is taking 12 credit courses. Second mother is working on her language skills and is getting ready to register for GED. Our volunteers are very busy taking care of them and preparing them for Life!

If we can help one woman off the street, provide her a home and help her build a future for her child and herself, that is what we want to do. Enkrateia House of Hope works with a budget of less than $10,000 per month, and has only one part-time employee (maybe 2 in the future as our finances permit)

With that being said, I am requesting your consideration to exempt small **non-profit** organizations like Enkrateia House of Hope which work with a relatively **small budget**, and with one or two **part-time** employees from ESST requirements.

It will be very kind of you to help us to carry out our mission of helping the displaced pregnant women in need. We are providing them with a safe home and helping them to build their future.

William D Arockiasamy

Sincerely,
William D. Arockiasamy
6040 Polk Ave
Mayer, MN 55360
952 240-7121

From: Samantha Goff
To: RULES, DLI (DLI)
Subject: Rule 5200.1200; Rule Draft RD4877
Date: Thursday, March 27, 2025 1:19:22 PM
Importance: High

Dear Rulemaking Coordinator,

I am writing to provide feedback on the proposed rules governing MN ESST under MN Rules, Chapter 5200. While ESST is a crucial benefit for employees who genuinely need time off due to illness, caregiving, safety concerns, etc., it is equally important to ensure that the rules include clear provisions to address potential misuse and provide reasonable protections for employers.

Concerns Regarding ESST Misuse:

Employers have a vested interest in ensuring that ESST is used appropriately and in good faith. However, there are many instances where employees exploit ESST to bypass employer scheduling policies, obtain additional time off beyond their allotted leave, or to avoid a less desirable shift. Such misuse leads to operational disruptions, increased costs, and an undue burden on other employees who must compensate for absences.

ESST misuse has a profound impact on our organization, which serves individuals with disabilities, including those experiencing severe depression and other disorders/diagnoses. Frequent and repeated absences and disruptions to established routines and services can have devastating consequences on the well-being of these individuals. We believe that businesses like ours were largely overlooked when the ESST law was enacted, as it does not account for the unique nature of our agency's operations, scheduling demands, service delivery requirements, or population supported. The instability caused by repeated and unregulated ESST absences can have life-altering repercussions on the vulnerable individuals we serve and support.

A particularly concerning scenario is the potential liability associated with ESST misuse. If an employee's repeated and inappropriate use of ESST creates extreme distress for a client, leading to a tragic outcome such as a self-harm or suicide, and the client's family subsequently sues the agency, would the agency have legal grounds to hold the state accountable? Specifically, could the agency pursue legal action against the state for implementing a law that

restricted the agency's ability to properly address attendance concerns before they escalated to such a level simply because the employee stated they wanted to use ESST? Thankfully, this is a hypothetical scenario providing insight into the type of population we support, however, this is a critical question, given that our agency - and others in our industry - were not consulted before these policies were enacted considering not every business serves the same type of customer.

Recommended Provisions:

To balance employee rights with employer needs, I recommend incorporating the following provisions into the rulemaking process:

1. Clarification on Employer Inquiry Rights:
    a. Employers should be allowed to request reasonable documentation or verification when there is a clear and documented pattern of suspected ESST misuse.
        i. Excessive or repetitive use of ESST on high-demand workdays or weekends
        ii. ESST requests that align with previously denied time-off requests
        iii. Sudden ESST requests without prior notice that repeatedly disrupt operational needs
2. Procedures for Addressing Suspected Misuse
    a. Employers should be permitted to engage employees in a discussion regarding the legitimacy of ESST use when patterns of misuse arise.
    b. A process for escalating repeated misuse cases, such as requiring a doctor's note after a certain threshold of unscheduled absences (aside from the 3 consecutive day rule).
        i. In our field, it is possible an employee may work 6 shifts in 2 consecutive days with 6 different people at 6 different locations.
3. Protection Against Retaliation Claims for Legitimate Employer Actions
    a. Employers should be explicitly protected from retaliation claims if they engage in good-faith efforts to ensure ESST is being used appropriately.
    b. Establishing clear guidelines distinguishing between reasonable employer oversight and prohibited retaliation.
4. Encouraging Proper Use of ESST Through Policy Transparency
    a. The rules should encourage employers to continue to outline expectations for ESST use in employee handbooks but also communicate potential consequences of misuse.

While ESST provides vital protections for employees, it is equally important to prevent misuse that undermines the integrity of the policy or the company employing them. By implementing the above recommendations, the final rules can help strike a fair balance between employee

rights and employer responsibilities, ensuring ESST serves its intended purpose without being exploited.

Thank you for your consideration of this feedback. I appreciate the opportunity to contribute to the rulemaking process and look forward to reviewing further developments.

Thank you,
Samantha Goff
Human Resource Manager
Legacies, LLC.
51 W. 4th Street, Winona, MN 55987
P: (507) 474-9110 F: (507) 218-9748

From: Kim Sandry
To: RULES, DLI (DLI)
Subject: misuse of ESST - Rulemaking
Date: Friday, March 28, 2025 1:54:51 PM

Please put something in the rules for dealing with misuse of ESST time. It is frustrating when employees use ESST time for vacation or state basketball games etc. We can't ask them about it unless it is more than 3 consecutive days. How can we deal with this? We see pictures on Facebook of them in Mexico or people that used proper leave see them at the state tournament etc. We are a small community and we know many times when it is abused but there seems to be no repercussions. IF we ask, the employees just respond that we can't ask until after 3 days and won't answer. There is no real way to verify the reason for using ESST.

The honest employees are just as frustrated. The dishonest ones are getting away with everything.

IF you have suggestions of things we can do, please share them with us!
In the rulemaking document 5200.1206, Subpart 1: it says an employee is not protected if they use ESST for a non-covered purpose, but how do we show it is not for an approved purpose? We can't ask if less than 3 days and even if it is more, the employee can write their own note attesting that it was for a qualified reason.

Also, 5200.1207 says additional sick time in CBA, can be used for qualifying reasons. Once again, how do we "prove" it is for a non-qualifying reason?

Thanks!
Kim

Kim Sandry
MACCRAY Schools - ISD 2180
Business Manager
PO Box 690
711 Wolverine Drive
Clara City, MN 56222
Phone: 320-847-2154 ext. 1107
Fax: 320-301-0932

From: Kris Karl
To: RULES, DLI (DLI)
Subject: ESST Rules
Date: Friday, March 28, 2025 2:33:18 PM

I am in the HR Dept that approves the ESST and want to ask/mention that if an employee puts in for ESST for Appliance delivery we have to let them go. I don't understand if the ESST reasons are specific for their use. Why do I have to let her go? I get why ESST is there but come on the reasons are
specific but schools should have a little say in the denial of this.

Can you please explain that if you provide ESST for specific reasons why can nothing be denied?

--
Kristine Karl

Payroll Officer
BLHS Schools

kkarl@blh.k12.mn.us

220 3rd St West
Hector, Mn 55342
320-848-2233 Ext 1305

From: Beth Carlson
To: RULES, DLI (DLI)
Subject: ESST
Date: Friday, March 28, 2025 2:59:29 PM

Hello -
I have been asked to write in and share our experience with ESST leave. Working at a small school in a small community we are aware of people's whereabouts more than we should be. ESST has been abused to go on multi-day fishing trips, tacked on to days before and/or after or part of vacation, numerous mental health days for what I believe qualify more as a day of rest or running errands. Our district provides 12-15 sicks days per year depending on your job, in addition to personal leave that can accumulate up to 5 days all over a period of 173 - 180 day school year.

I do not want to deny people of needed leave but believe it is abused on a regular basis. A webinar talked about the god of the leave policies for worker moral but I have found it to have the opposite effect. Staff know what others are doing and are picking up the slack when there are a lack of substitutes often times working with additional students with high needs. The law does not allow us to deny, question or acquire validation and even allows people to self attest after 3 days and makes it very difficult to reign in those who are abusing the plan.

I applaud the effort since people should be able to help out their family and them selves when sick or in need but would appreciate some local control over verification and instruction on how to handle known abuses other than court which does not seem like a good option for anyone.

Thank you for listening and I do appreciate the efforts made!

Beth Carlson
KMS MARSS Coor/Payroll
320-264-1411 ext 1922

From: Clint Zimpel
To: RULES, DLI (DLI)
Subject: Public Comment to Proposed Permanent Rules Relating to Earned Sick and Safe Time
Date: Tuesday, April 1, 2025 11:49:38 AM
Attachments: ESST Comment Period 4 1 25.pdf

Krystle
Please see the attached comments related to the latest proposed changes to ESST.

This has been a difficult process to work through due to our company's long history tying us to a negotiated CBA. It is very unfortunate that those CBA's have been ignored in the process and no avenue to honor them is presented other than for us to purchase a waiver from the union. In addition to our local CBA we are also tied to National agreements to ensure prevailing wages are met across the country. We have done everything we can to ensure our employees are taken care of and it is still not enough. It would be nice if employer's voices were valued more in this process. There is no where for employers to contact and explain how the rules are being manipulated and misused.

Regards,

Clint

Clint Zimpel, President
T 218.722.0205 : F 218.722.6598 : M 218.343.7269

BendTec
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Duluth, Minnesota 55802

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message that do not relate to official business of United Weld Holdings shall be understood as neither given nor endorsed by United Weld Holdings.

BendTec
FABRICATION & BENDING

April 1, 2025

Krystle Conley
Rulemaking Coordinator
Office of General Counsel
443 Lafayette Road North, St. Paul, MN 55155
Phone: 651-284-5006
e-mail at dli.rules@state.mn.us

Subject: Public Comment to Proposed Permanent Rules Relating to Earned Sick and Safe Time

Please accept the following comments on the proposed rule changes on the current Minnesota Earned Sick and Safe Time (ESST) law.

5200.1206 MISUSE OF EARNED SICK AND SAFE TIME.

Subp. 2.**Pattern of Misuse.** – "Pattern" what does the Department of Labor (DOL) define as a pattern, how many instances constitute a pattern? Does the pattern need to be solely based on one single employees' actions or do the actions of your entire workforce constitute a pattern?

Background: BendTec is a Union facility covered by a bona fide CBA. Each member receives $2 for every hour that they work, and it is placed in a savings account to use for any manner they seem fit. They negotiated away from a true "vacation" fund to allow them to use/spend this money as they see fit and when they see fit. Naturally when ESST was passed they claimed they had no vacation, and all businesses tied to our CBA as well as others all over the state were forced to pay for a benefit, we already negotiated in good faith for and feel we offer to the employee in the manner they wanted. The union offered to sell us a waiver at a $/hr. rate that was quickly turned down as there was no interest from the employers in paying for vacation a second time around.

With the inclusion of ESST we have seen a 204% increase in "No Notice" absenteeism. In 2023 prior to ESST being implemented we had 73 instances where an employee did not show up to work and did not notify us until the following working day. In 2024 after the implementation of ESST that number increased to 149. Fifty percent of the "No Notice" days missed were on either Monday or Friday, and they accounted for 56% of all the hours associated with "No Notice" days.

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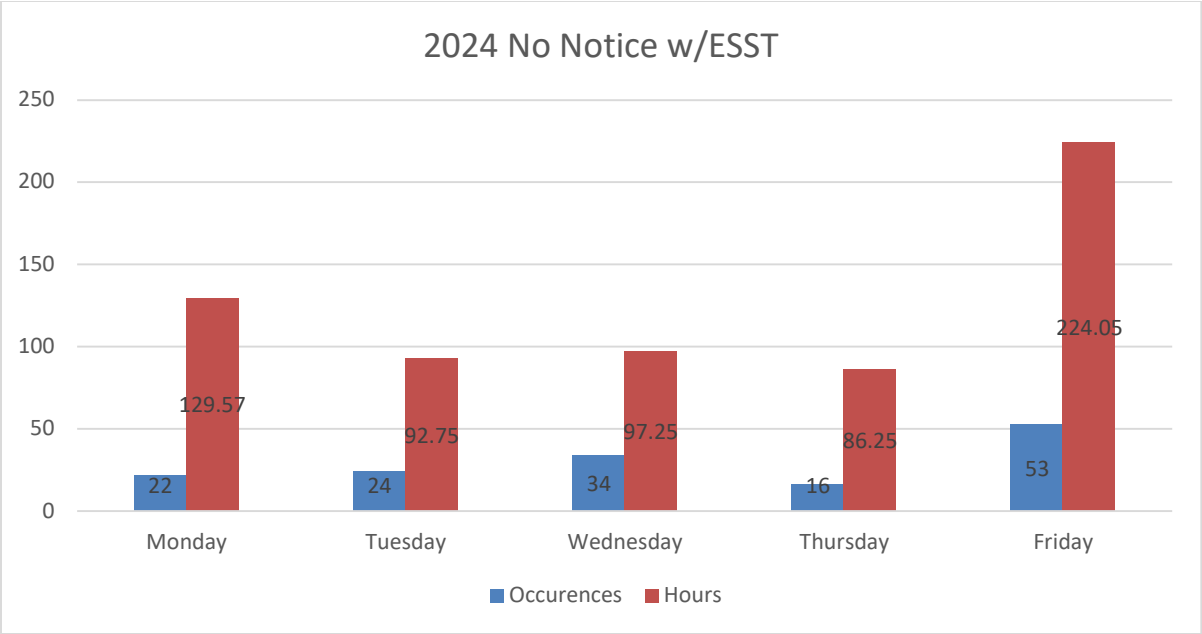

With all 149 instances being less than three days and submitted by the employees as ESST there is little that we can do to minimize this from happening. The new proposed wording states that we can ignore the "three consecutive days" published under Section 181.9447, subdivision 3, however the employee simply needs to write their own permission slip per subdivision 3 item b, *"then reasonable documentation for the purposes of this paragraph may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose"*.

This method or wording does not provide the employer with any assistance. The employee simply grants themselves permission for not showing up. There is no method for the employer to collect and provide documentation of misuse. Prior to ESST there was never an issue between the Union and our company related to vacation or time off, now it is a constant talking point. We also have two different union contracts in our facility, one CBA had the wording above which allowed them to claim ESST as well as the CBA allowance for time off. The other CBA has a different PTO structure, so they did not qualify, now both Unions are pinned against one another.

Issue 2 – Overtime beyond 8 Hours

Our CBA allows employees to collect OT (1.5x) on any hours over 8 per day. Automatic, there are no requirements for a worker to meet 40 hours a week prior to collecting overtime benefits. If we have our employees working overtime Monday through Friday the ESST law now allows them to work OT Monday through Friday, get an increase in pay for those 40 hours versus if we had not worked OT and then they can skip Friday and get paid ESST and us as an employer can't do anything about it.

No means for disciplining an employee exist for taking advantage of this situation, and the state's ESST rules appear to encourage it.

Issue 3 – Pattern

If one of our members decides he intends on vacationing for the week, in the past they would take the five days off and then draw from their savings account for the five days. Now they will use ESST on Monday, draw from savings Tuesday, use ESST Wednesday, draw from savings Thursday, and use ESST on a Friday. When you know they were on vacation and they have told others they were in Florida for example, there is little we can do. This has happened, they just look at you and laugh and make the comment "I didn't use it three days in a row so you can't ask me to verify my absence complies with the ESST law".

We are not talking about minimum wage workers at a coffee shop or restaurant, these are employees who make more than $100000 per year and they are taking advantage of a system at the expense of the employer who has already bargained with them to provide a benefit for time off. I don't believe these people were ever the target or intended audience of the bill, yet all the rules continue to ignore previously negotiated CBA's.

Does a pattern of this nature fall into what is being discussed?

Cost of ESST to Company

Cost of CBA Vacation 2024: $104,739.29

Direct Cost of ESST in 2024: $44,596.36 (Does not include the cost of lost time for employees not showing up)

The State of Minnesota renegotiated our CBA and provided a $0.80/hr. wage increase without our company or local bargaining group having any say. Employers are then forced to spend more money on OT to make up for the lost time and loss of production.

It does not appear that the Misuse wording will solve anything as long as the employee can write their own permission slip to be gone.

In a recent article published in the Duluth News Tribune with respect to Governor Walz requiring state workers return to the office he was quoted as saying "At the end of the day, I work closely with them. I value the right to collectively bargain these types of decisions," why then does he not value all the CBA's that already cover vacation and time off.

Thank you for your time and efforts related to fixing the ESST bill.

Regards,

Clint Zimpel
President
BendTec, LLC

From: Hilgart, Matthew
To: RULES, DLI (DLI)
Subject: AMC ESST Rule Input_25_0401
Date: Tuesday, April 1, 2025 3:45:28 PM
Attachments: AMC ESST Rule Input_25_0401.pdf

Dear Ms. Conley,

Please find attached input on proposed final rules for ESST from the Association of Minnesota Counties (AMC).

Please let me know if you need anything else from me.

With gratitude,

Matt

Matt Hilgart

Association of Minnesota Counties
125 Charles Avenue
Saint Paul, MN 55103
T: 651-789-4343
M:612-805-5088

Association *of* Minnesota Counties

April 1, 2025

Ms. Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Minnesota Department of Labor and Industry
(Via Email)

Dear Ms. Conley,

On behalf of the Association of Minnesota Counties, we respectfully submit the following input and requests for clarification regarding the Department's proposed permanent rules governing Earned Sick and Safe Time (ESST) statutes, reflected in 5200.1200 to 5200.10207.

This input reflects the considerations of our Association as well as county human resources professionals. Each section of input includes background of concerns and questions along with implementation examples.

Sincerely,

Matt Hilgart
mhilgart@mncounties.org
Association of Minnesota Counties (AMC)
125 Charles Avenue
St. Paul, MN 55103

Lines 2.1 – 2.18, Proposed Rule 5200.1202, Subpart 1, A, B, & C:

Clarity is needed regarding the new standard of "if the employer anticipates…" for guessing/determining what percentage of "hours worked" will be happening in Minnesota. For example, what happens if, at the end of the "accrual year," the employer was wrong? Maybe there was no "change in circumstances," but when someone totals up their "hours worked" in Minnesota vs. outside of Minnesota, it turns out that the employer guessed and "anticipated" incorrectly, and the in-Minnesota "hours *worked"* were actually just more than 50% of the total hours worked, but ESST was not earned on the out-of-Minnesota hours worked.
Right now, there is no requirement in the proposed rules to go back and retroactively accrue ESST on all hours worked anywhere for that accrual year because the employer guessed wrong.

Lines 3.17 – 3.21, Proposed Rules 5200.1203, Subpart 1: "End of each pay period"

The term "end of each pay period" is a problematic phrase as it is used for determining when ESST is credited and available. This term could mean one thing to HR, and another thing to Payroll.

- Interpretation A: On one hand, employers would count hours worked in a 2-week period, and call that the "pay period" because that is the period in which the pay is earned.

- Interpretation B: On the other hand, most all public sector pays on a "lag" basis. On the Thursday (or Friday, whatever the practice is) after those 2 worked weeks (the "lag"), counties issue pay for those 2 worked weeks. Employers spend Monday through Thursday (or Friday) in calculation and administration time, counting up how many hours were worked in the 2 worked weeks and calculate how much money is due to the employee and how many hours to deduct and accrue in various leave banks, and finally issue the proper pay and leave bank accounting for the 2 worked weeks. We issue the pay every 2 weeks, and we also call that pay date-to-pay date period the "pay period" because that is when the pay is issued.

Lines 3.20-3.21 says, "is considered accrued when the employer processes and credits the time to the employee at the end of each pay period." Does this phrase mean that employers can use the calculation and administration time built into Interpretation B?

Furthermore, if employers use Interpretation B allowing for the accounting and administration time, then what if the Payroll Team finishes and posts the payroll and leave bank amounts early (e.g., on Wednesday), but doesn't make the monies available until the normal pay day (e.g., Thursday)? Would employees get access to ESST accruals when the employer "processes and credits the time to the employee" (Wednesday), or would we instead pay attention to the employer's defined timeline and make the ESST available "at the end of each pay period" (Thursday)?

Lines 4.1 – 4.5, Proposed Rules 5200.1203, Subpart 3: Reinstating up to "80 hours of previously accrued by unused" ESST if rehired within 180 days.

If previously accrued ESST hours were "cashed out" upon termination, are we assured that zero hours would be leftover to be reinstated upon rehire? We would suggest that "cashing out" is considered "used". In addition, we would suggest that "cashing out," even on a discounted basis, would be considered "used" in whole.

Lines 4.6 – 4.21, Proposed Rule 5200.1204, Subpart 1, A& B: Advancing ESST based on the employer's calculation of the employee's anticipated hours worked for the accrual year

County HR managers are curious on how "advancing hours" is different than "frontloading accruals" when an employee starts mid-calendar year. Is "advancing hours" an alternative way for an employer to not have to fully frontload right away, even if the employee starts employment on Day 1 of the accrual year? Or, is this "advancing hours" method limited to mid-year hires? If so, should additional words be added to Subpart 1.A., such as: "When an employee begins employment *after the start of the accrual year*,"?

Lines 5.11 – 5.17, Proposed Rule 5200.1205, Subparts 1 & 2: An employee cannot be forced to use ESST, but then is on "unprotected leave."

When the employer's only leave (e.g., PTO) has been forced to be made "more generous" so that all leave accruals qualify as ESST, but an employee "requests not to use ESST" and therefore is no longer protected by ESST, can the employer then invoke its policy that "employees cannot go on an unpaid leave of absence if they have a leave balance"? The employer would then require the employee to use accrued leave, which happens to also be ESST, but the leave usage would not be protected as ESST.

Or, must the employer allow the employee to go on an unpaid leave of absence, despite having available leave accruals, in contradiction to the employer's policy? Thereby enabling the employee to intermittently use more generous ESST leave to manipulate and extend eligibility for the employer's contribution toward insurance coverages.

Lines 5.22 – 6.10, Proposed Rule 5200.1206, Subpart 2, A&B

Counties respectfully request further clarifying the ability of the employer to define "misuse" in the context of its operations to ensure operational and service integrity and to reflect the nuances of certain patterns and industry behaviors.

For example, is it "misuse" when, at the last minute, an employee suddenly requests "unforeseeable" ESST for the same period when a previous, non-ESST request for time off was denied? If claiming ESST in order to take off previously denied non-ESST leave is not considered "misuse," then it should be added as an example of "misuse"; a pattern of such misuse should not need to be required before the employer can act on it.

In addition, counties would ask rule clarification that allows the employer to require something other than "a written statement from the employee" to substantiate the reason for the absence. This is critical for protecting against inappropriate leave and potential abuse.

Lastly, counties would argue the second sentence of Section 181.9447, Subdivision 3(b) should not apply in instances of misuse:

"(b) For earned sick and safe time under subdivision 1, clauses (1), (2), (5), and (6), reasonable documentation may include a signed statement by a health care professional indicating the need for use of earned sick and safe time. *However, if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, then reasonable documentation for the purposes of this paragraph may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose covered by subdivision 1, clause (1), (2), (5), or (6).*"

Lines 6.14 – 6.19, Proposed Rule 5200.1207: "Excess paid time off and other paid leave made available"

There are ambiguities in trying to pinpoint what is meant by "excess paid time off and other paid leave made available." When is paid time off deemed to be "excess paid time off" and not subject to the ESST statutes? After 48 hours are used? After 48 hours are used for an ESST purpose? At Hour 1, if it is used for a non-ESST purpose? Clarification is needed.

Even though the proposed rule indicates the ESST requirements do not apply to the "excess paid time off and other paid leave made available", how can the employer go beyond ESST requirements and use its vacation leave policies, for example, when an employee instead "claims" the requested leave is for ESST purposes and not the vacation they previously requested but were denied?

From: Wirth, Owen
To: RULES, DLI (DLI)
Subject: LMC ESST Rulemaking Public Comment
Date: Tuesday, April 1, 2025 5:08:24 PM
Attachments: LMC ESST Rules Commentary 25_04_01.pdf

Ms. Conley,

Please find the attached comments submitted on behalf of the League of Minnesota Cities for the Earned Sick and Safe Time proposed rules. Please let me know if I can provide any other information.

Thank you.

Best,
Owen

Owen Wirth | **Intergovernmental Relations Representative**
Phone: (651) 281-1224 | Mobile: (651) 357-8921
owirth@lmc.org

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lmc.org | Facebook | X | LinkedIn

LEAGUE of MINNESOTA CITIES

Krystle Conley, Rulemaking Coordinator
Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155

Re: Request for comments for possible rules governing Earned Sick and Safe Time, Minnesota Rules 5200.1200-5200.1207

Dear Ms. Conley,

Thank you for the opportunity to submit these comments on behalf of the League of Minnesota Cities members in response to the Department's Proposed Permanent Rules, 5200.1200 to 5200.1207, governing Earned Sick and Safe Time (ESST) statutes §§ 177.50 and 181.9445 to 181.9448.

The League of Minnesota Cities has a voluntary membership of 841 out of 856 Minnesota cities. It provides a variety of services to its members, including education, training, policy-development, risk-management, and advocacy services. The League's mission is to promote excellence in local government through effective advocacy, expert analysis, and trusted guidance for all Minnesota cities.

At the League of Minnesota Cities, we have the opportunity to hear from our members on questions they are working through in the new law that can make implementation challenging. We routinely receive questions relating to the 2025 expansion of ESST to all paid time off made available to an employee for personal illness or injury by an employer in excess of the ESST minimum amount required. As we have previously raised, public employers are well known for providing generous leave plans to their employees, and as such often have considerable leave balances, even prior to ESST implementation. These generous leave policies were often established through a collective bargaining process over time involving compromise by employers and unions alike that was effectively disregarded with the ESST expansion provisions. The 2025 ESST expansion provision has been problematic for employers in terms of implementation, administration and documentation, some of which we have outlined below.

With this lens, we share the following.

- Proposed rule 5200.1203 Subpart 3 – While the proposed limitation of 80 hours of previously accrued ESST time for rehired employees by the same employer within 180 days is helpful, it would be beneficial to also include the existing language found in Minn. Stat. § 181.9448, Subd. 2, to clarify those 80 hours would not need to be reinstated had ESST hours already been previously accrued but unused and cashed out to the employee upon separation.

- Proposed rule 5200.1206, is a positive start in implementing checks and balances routinely established in employer leave policies prior to ESST. We would be supportive of rules allowing employers to establish policies to then be communicated to employees regarding what constitutes ESST misuse. Permitting employers to determine what constitutes misuse and appropriately sharing with employees, affords for the nuances of each various workplace and accounts for misuse patterns falling outside the two limited circumstances in the proposed rules. Alternatively, we would want to include a third pattern of misuse. This third misuse pattern would cover situations where an employee's previously requested time off (such as for vacation) was denied, and then the employee calls in for an absence using ESST for that exact time period. Additionally, it seems there should be a replacement of the word "subpart" found on line 6.9 on page 6 instead to "section" to ensure the demand for an employer's reasonable documentation would apply to both subparts one and two under 5200.1206. Lastly, within this section the proposed language that an employer's demand for reasonable documentation in cases of suspected abuse is not viewed as a retaliatory action is appreciated. However, it is important to note that Minn. Stat. § 181.9447 Subd. 3 (b) also states "if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, then reasonable documentation for the purposes of this paragraph may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose covered by subdivision 1, clause (1), (2), (5), or (6)." This allowance for an employee to provide a written statement in lieu of a medical provider's note seems counterintuitive to common practice for cases of suspected ESST abuse.

- Proposed rule 5200.1207 – While the clarification that anti-retaliation and other provisions only applies to leave used for an ESST qualifying purpose is appreciated, many employers already included accountability provisions for accrued sick leave that were effectively eliminated through Minn. Stat. § 181.9448 ESST expansion. As noted earlier, public sector employers often have been generous with employee leave for illness and injury, so the expansion of ESST has impacted public sector employers significantly as it effectively eliminated the medical documentation component in many cases for earlier existing pre-ESST leave balances.

Respectfully submitted,

Owen Wirth
owirth@lmc.org
League of Minnesota Cities

From: Emily Ruhsam
To: RULES, DLI (DLI)
Subject: Comments on ESST Rulemaking - Support of Misuse of Earned Sick and Safe Time
Date: Wednesday, April 2, 2025 10:37:48 AM

To Whom it May Concern,

I am writing in strong support of the proposed rule 5200.1206 - Misuse of Earned Sick and Safe Time:

5200.1206 MISUSE OF EARNED SICK AND SAFE TIME. 5.19 Subpart 1. Misuse.
An employer is permitted to demand reasonable documentation from an employee when there is a pattern of misuse by the employee. A pattern of misuse occurs when, for a claimed unforeseeable use pursuant to Minnesota Statutes, section 181.9447, subdivision 2: A. an employee

routinely uses earned sick and safe time on their scheduled work day immediately before or after a weekend, vacation, or holiday; or B. an employee routinely uses increments of earned sick and safe time of less than 30 minutes at the start of a scheduled shift.

i-Health currently has more than 100 locations across Minnesota and more than 3,000 employees. Currently, our organization utilizes paid time off (PTO) to comply with the Minnesota Sick and Safe time rules. Due to staffing shortages in the healthcare industry, if employees don't give sufficient notice of an absence (e.g., when they call in sick for an unforeseeable absence), we are left scrambling to find a backfill and have been in situations where we have needed to delay or cancel an appointment, procedure or surgery. This rule would allow our teams to demand documentation where there are patterns of potential misuse by employees. Thank you for considering this important rule that would significantly help support our patients and healthcare professionals.

We would welcome a conversation to discuss this proposed rule in further detail. I can be reached at emilyruhsam@revohealth.com.

Kind Regard, Emily

Emily L. Ruhsam, JD, SPHR
Sr. Director, Employment Counsel, HR & Employee Relations

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From: Bragg, Samantha C.
To: RULES, DLI (DLI)
Cc: Douglas, Bruce J.
Subject: Comments for Proposed ESST Rules
Date: Wednesday, April 2, 2025 11:17:42 AM
Attachments: Comments for Proposed ESST Rules - 4.2.25.pdf

Hello,

Please find attached comments for the proposed ESST rules. Please let us know if you have issues opening the attachment.

Sincerely,

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MEMORANDUM

TO: Krystle Conley, Rulemaking Coordinator
Office of General Counsel
dli.rules@state.mn.us

FROM: Bruce J. Douglas, Esq.
Samantha C. Bragg, Esq.

DATE: April 2, 2025

SUBJECT Comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law

This correspondence is in response to the Minnesota Department of Labor and Industry's ("the Department") second request for comments for possible rules governing Minnesota's Earned Sick and Safe Time ("ESST") law. We suggest the Department consider revising the proposed rules issued on March 3, 2025 as discussed below. We further suggest the Department issue rules addressing several more subjects.

REVISIONS TO PROPOSED RULES

Section 5200.1202 – Hours Worked

A. Subpart 1

Subpart 1 clarifies how employees accrue ESST for hours worked outside Minnesota. The proposed rules let an employee accrue ESST on all hours worked despite the employee's location, if the employer anticipates that the employee will work over 50 percent of his or her hours for than employer in Minnesota in an accrual year.

First, we would like to point out that this differs drastically from the history of paid sick leave in our state. All three city ordinances (St. Paul, Bloomington, Minneapolis) state that employees will accrue 1 hour of ESST for every 30 hours worked "*within the geographic boundaries of the City*." (Emphasis added.) Allowing employees to accrue ESST when working outside the boundaries of the state contradicts past and current legislation. There appears to be no statutory basis for this proposed rule.

Second, the proposed rules do not address when an employee can use those ESST hours. For example, if a non-Minnesota based employee accrues ESST while working in Minnesota, can the employer only let the employee use ESST when the employee is scheduled to perform work in Minnesota? The Department should limit use of ESST hours to when the employee is scheduled to perform work in Minnesota.

B. Subpart 3

Subpart 3 clarifies how an employer should deduct an employee's ESST for an intermediate shift. However, the proposed rules do not define "indeterminate shift." The Department should define "indeterminate shift."

Section 5200.1204 – Advancing Hours

A. Subpart 1

Subpart 1 allows employees to "advance" ESST hours, and subpart (1)(b) specifically discusses how employers must provide additional ESST if not enough ESST hours are advanced. The Department should clarify that if an employer advances more ESST than the employee would have accrued, the employee has no right to a payout of those "unearned," advanced hours.

B. Subpart 2

Subpart 2 clarifies that employers can "change methods" (*i.e.*, switching from accrual to frontloading and vice versa). However, the proposed rules do not address what happens to the accrued hours when switching from the accrual to frontload method. The Department should clarify that unused, accrued ESST hours may carryover into the next benefit year; provided, however that unused, accrued ESST hours will count towards the frontloaded amount issued in the next benefit year.

Section 5200.1205 – Employee Use

The proposed rules give employees the right to use ESST and prohibit employers from requiring employees to use ESST. However, if an employee chooses not to use ESST, the absence would not be protected by the ESST law.

The Department should clarify that employers can require employees to use PTO (even if PTO is being used for an ESST-covered purpose) in the same way employers can require employees taking FMLA leave to use accrued vacation or PTO.

Section 5200.1206 – Misuse of ESST

The proposed rules address ESST misuse by clarifying that an employee's use of ESST for a non-ESST covered reason would not be protected by the ESST law. The proposed rules allow employers to "demand reasonable documentation from an employee when there is a pattern of misuse … for a claimed unforeseeable use," notwithstanding the timeline in Minn. Stat. §

181.9447(3)(a). Misuse is defined to include an employee routinely using ESST the day immediately before or after a weekend, vacation, or holiday; or using increments of ESST in less than thirty minutes at the start of a scheduled shift. The proposed rules further specify that employers would be barred from denying an employee ESST based on earlier misuse or the employer's suspicion that the employee may misuse ESST.

The Department should revise this section in two ways. First, the circumstances of misuse should be examples and not exhaustive. Second, the Department should clarify whether an employer can can ask for documentation right away if misuse is suspected. In other words, the timeline in Minn. Stat. § 181.9447(3)(a) does not apply if misuse is suspected.

Section 5200.1207 – More Generous Sick and Safe Time Policies

The ESST law requires paid time off and other paid leave provided to employees over the minimum amount required under the ESST law for absences from work due to personal illness or injury (but not including short-term or long-term disability or other salary continuation benefits) to meet or exceed the minimum standards and requirements under the ESST law other than Minn. Stat. § 181.9446 (i.e., ESST accrual). The proposed rules clarify this would only apply "when the leave is being used for a qualifying purpose."

The Department should clarify whether this means if an employer provides employees paid leave in an amount beyond the minimum ESST requires, and permits employees to use such paid leave for personal illness or injury, then the employer must treat the entire paid leave balance as ESST, or if an employer can designate only a portion of this time for ESST. For example:

- If an employer has two "buckets" of paid time off (one for traditional vacation purposes that cannot be used for personal injury/illness and one for MN ESST) will the vacation bucket be subject to the ESST law?

- If an employer requires employees to use PTO or vacation time for FMLA, does the paid leave bucket become subject to the ESST law because FMLA can be used for personal injury/illness, thus subjecting the vacation/PTO bucket to ESST requirements?

- If an employer has one bucket of PTO, does the ESST law require the employer to reinstate all unused PTO if the employee is rehired within 180 days of separation or can it cap the reinstatement amount at 48 or 80 hours?

- If an employer has a PTO/vacation bucket and lets employees use PTO/vacation for ESST-covered purposes but does not require it, do the ESST requirements still apply to the PTO/vacation bucket?

- How does this affect unlimited PTO/vacation policies?

ADDITIONAL SUBJECTS TO BE COVERED IN FINAL RULES

Increments of Use

The ESST law states: "[ESST] may be used in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15-minute increments nor can the employer require use of [ESST] in more than four-hour increments."

The Department should make rules stating an employer can require use of ESST between 15 minutes and 4 hours regardless of the increment of time employees are paid in. This reading of the statute is the better one and aligns with the local ordinances. See attached chart.

Collective Bargaining Agreements ("CBA")

The Department should make rules clarifying that nothing in the ESST law prevents an employer from using the vacation or paid leave provided in a Collective Bargaining Agreement to comply with the ESST law or bargaining with a union for such a procedure.

Notice Requirements

The Department's sample ESST notice incudes a "language notice" on the last page indicating that employees can request the information in a different language. However, the statute does not require employers to include a "language notice." The Department should clarify whether this portion of the notice is required or merely recommended.

FAQs

If the Department creates rules, we request the FAQs either by removed from the Department's website or updated to align with the rules to avoid confusion amongst employers and employees.

Rules Format

If the Department creates rules, we request the format to be similar of that to the Family and Medical Leave Act rules (29 C.F.R. pt. 825) to for clarity for employers, employees, and the public.

BJD:SCB

Minnesota Sick and Safe Leave Laws – Comparison Chart

Topic	Minnesota Statute[1]	Minnesota Rules	MLPS Ordinance[2]	St. Paul Ordinance[3]	Bloomington Ordinance
Minimum Usage	Earned sick and safe time may be used in the same increment of time for which employees are paid, provided an employer is not required to provide leave in less than 15-minute increments nor can the employer require use of earned sick and safe time in more than four-hour increments.[4]	TBD	An employer must allow an employee to use sick and safe time in increments consistent with current payroll practices as defined by industry standards or existing employer policies, provided such increment is not more than four (4) hours.	Employees may use Earned Sick and Safe Time in the smallest increment of time tracked by the Employer's payroll system, provided such increment is not more than four (4) hours.	An employer must allow an employee to use sick and safe time in increments consistent with current payroll practices as defined by industry standards or existing employer policies, provided such increment is not more than four hours.

NOTE: Duluth repealed its Earned Sick and Safe Time Ordinance on December 18, 2023 with an effective date of January 1, 2024.

[1] Original statute on minimum usage: Earned sick and safe time may be used in the smallest increment of time tracked by the employer's payroll system, provided such increment is not more than four hours.

[2] Minneapolis and Bloomington ordinances are identical with respect to minimum usage language.

[3] St. Paul ordinance's minimum usage language mirrors the original statewide statute on minimum usage. (*See* Footnote 1.)

[4] Underline reflects language added during the 2024 legislative session.

From: robert rsexecutiveprotection.com
To: RULES, DLI (DLI)
Subject: ESST letter
Date: Wednesday, April 2, 2025 12:45:08 PM
Attachments: Outlook-vtrx5lut.png
Letter to DOLI re ESST.pdf

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March 31, 2025

Krystle Conley
Rulemaking Coordinator
Office of Geneal Counsel
Department of Labor and Industry
443 Lafayette Road North
St. Paul, MN 55155
Email: dli.rules@state.mn.us.

Re: Comments on Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID No. R-04877

Dear Ms. Conley:

I am writing to comment on the Possible Rules Governing Earned Sick and Safe Time. I am the owner and CEO of Robert Smith Executive Protection (RSEP), which I founded in 2011. I have a degree in Criminal Justice, served as an EMT, spent six years in the United States Marine Corp, and have decades of experience in providing security services in a variety of fields. RSEP currently has 25 employees.

The demands of running a security business are many. There is stiff market competition, and my profit margins are tight. I work 7 days a week pretty much 365 days a year. The operational side of running a security business is challenging, particularly when it comes to the many federal, state, and local laws and ordinances we have to follow. It is almost impossible to keep up with the changes in these laws over the past few years without having to pay an attorney.

Before commenting on the specific Possible Rules Governing Earned Sick and Safe Time (Proposed Rules), I would just like to comment that the ESST law itself imposes significant administrative and financial burdens, particularly with the changes and the lack of clarity for employers on the practicalities of how to implement the law's requirements.

I offer the following comments from the perspective of a sole owner of a small business.

- Employee use. One of the Proposed Rules (Rule 5200.1205 Subpart 1) says: "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." This is a difficult and unclear area. For example, an employer cannot ask the employee for documentation of the reason for their use of ESST until after 3 consecutive absences, and employees do sometimes call off a shift without specifying why they are not coming in, making it difficult for an employer to know whether or not the time should be considered ESST

time. Should the employer assume the employee wants to be compensated with accrued ESST? Would that be considered "requiring" the employee to use ESST?

- Employee use. Another issue with the language of Rule 5200.1205 Subpart 1 that says that "It is an employee's right to use earned sick and safe time for a qualifying purpose" is that it appears to give the employer absolutely no ability to control the schedules of its employees. (Emphasis added). For example, if an employee tells the employer on Monday that she needs to be out on Thursday and Friday to take her husband's grandmother to some medical appointments, under the law and these Proposed Rules, an employer has no discretion to say no – regardless of what needs to happen at work on Thursday or Friday. It could be a significant work event that would require this employee's presence. The inability to say no to ESST requests imposes a significant burden on a small business, whose staff is already lean.

  RSEP's clients expect and rely on RSEP to provide the security services they absolutely need. In the example above, I have to scramble to find a replacement for that officer. Not all officers have the same background, training, and skills, and it might not be possible for me to find a replacement. If we fail to live up to our contractual obligations with m clients, it threatens our entire business relationship and could result in the contract being terminated.

  The language of the Proposed Rule doesn't appear to give employers discretion to ask the employee to reschedule or make other arrangements. The language of the Proposed Rule implies – and employees are saying – that employees get to take whatever ESST time they want, whenever they want it. That is a huge burden on small businesses, and it makes it difficult for small businesses to keep the staffing levels they need.

  I believe that the Proposed Rules and the law should be amended to say that an employer can refuse a request for ESST if it would pose an "undue hardship," much like the Americans with Disabilities Act. Small businesses simply can't function if employees can call off shifts with little or no warning, or without the ability to tell the employee their attendance at work is mandatory when the employee's absence on a certain day would pose an undue hardship.

- Indeterminate shifts. Proposed Rule 5200.1202 Subpart 3 governs "indeterminate shifts," which are a frequent occurrence in my industry. Clients can have the option of letting me know that the security officer at their location is no longer needed. So I typically will schedule the officer for a shift of 8 or 10 hours and I let them know if they can go home early, depending on the needs of the client. The Proposed Rule governing this type of shift is constrictive and burdensome. It does make sense to use the number of hours worked by the replacement officer who took that shift, if there is one. But if there is not a replacement for that shift, the Proposed Rule requiring an employer to look at the hours of all of the other employees working a similar shift and then calculating the average of those shifts, or "the greatest hours worked by a similarly situated employee who worked the shift for which the employee used sick and safe time" is unworkable. No one has time to do this type of calculation.

From the perspective of a small business owner, I suggest that the Proposed Rule state that, for a shift of an indeterminate length for which employee uses ESST, the employer should be given the option of using the hours of the replacement worker or the hours of the last shift worked by the employee. This would allow the employer to make sure the hours are correctly credited in real time, without the added burden of having to go back and review the entire payroll and do cumbersome calculations.

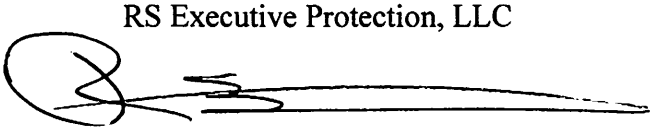
- Employee misuse of ESST. Proposed Rule 5200.1206 Subparts 1 and 2 govern employee misuse of ESST time and when an employer can request documentation of the employer believes the employee is taking ESST time for a purpose not included in the statute. Subpart 2 states or implies that there must be a pattern of misuse before an employer can demand documentation. I don't believe an employer should have to wait until an employee misuses ESST several times before the employer can take action.

  It's not uncommon for an employee to say they need to take ESST at a certain time, and I have information that leads me to believe the employee is not using it for a covered reason. Because we are a small company, word travels fast. Some examples would be where an employee asks for a day off for personal reasons, and that request is denied because the employee was needed to cover that shift. When the employee then says he needs the same day off for an ESST reason, and we also know that it's his birthday, I think I should be able to ask him for documentation of the purpose of his ESST request. Another example is when an employee asks to go on unpaid leave for 30-40 days and asks that the first 2 days of the 30-40 days be paid out of his accrued ESST time; but we have been told by others he is traveling to Africa to spend time with his family. I believe we should be allowed to require documentation in that situation.

  Therefore, I believe that the language of the Proposed Rule requiring that there be a pattern of misuse before requiring documentation of an ESST-covered reason for a PTO request is too constricting. It unnecessarily ties the hands of employers to be able to enforce ESST rules as they would any other laws. Employers should be permitted to require documentation of the need for ESST time if they have a reasonable suspicion that the employee is misusing ESST.

Thank you for the opportunity to comment on these Proposed Rules.

RS Executive Protection, LLC



Robert Smith

From: smith.mackenzie@dorsey.com
To: RULES, DLI (DLI)
Cc: Mick.Ryan@dorsey.com; molly.sigel@faegredrinker.com
Subject: Comments on proposed rules governing Minnesota Earned Sick and Safe Time
Date: Wednesday, April 2, 2025 2:04:13 PM
Attachments: image001.png
MELC Comment re Proposed ESST Rules.pdf

Good Afternoon,

Please see the attached memoranda from MELC, Ryan Mick, and Molly Sigel in connection with the proposed rules governing Minnesota Earned Sick and Safe Time.

Thank you,

Kenzie Smith
Legal Assistant to Anabel Cassady, Victoria del Campo, Chelsea McLean, Ryan Mick, and Colin Seaborg
Pronouns: She/Her/Hers

DORSEY
DORSEY+WHITNEY LLP

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Minnesota
Employment
Law Council

MEMORANDUM

TO:	Krystle Conley, Rulemaking Coordinator (dlirules@state.mn.us) Office of the General Counsel Minnesota Department of Labor & Industry
FROM:	Minnesota Employment Law Council
DATE:	April 2, 2025
RE:	Comments on proposed rules governing Minnesota Earned Sick and Safe Time (proposed Minn. R. 5200.1200 et seq.)

Thank you for the opportunity to comment on the proposed rules concerning Minnesota's Earned Sick and Safe Time Statute (Minn. Stat. §§ 191.9445 – 181.9448). The Minnesota Employment Law Council's ("MELC") members appreciate the effort that has gone into the rulemaking process. MELC offers the following comments for consideration.

Proposed Rule 5200.1202 – Hours Worked

MELC members appreciate the good faith effort to address concerns about accrual for employees who do not work primarily in Minnesota.

As a preliminary matter, it may be helpful for Rule 5200.1202 to affirm that the accrual rules do not apply to persons who are not an "employee" pursuant to the 80-hour threshold set forth in Minn. Stat. 181.9445, subd.5. That is, an employer is not required to track hours for persons who the employer anticipates will work less than 80 hours in Minnesota during the employer's accrual year.

Similarly, it would provide useful guidance to employers if subp. 3 addressed exempt employees who do not track time and for whom there often would not be a "replacement worker" or "similarly situated employees." For example, consistent with Minn. Stat. 181.9446(c), subpart 3 could confirm that exempt employees are "deemed to work" 8 hours in a work day in Minnesota for purposes of accruing earned sick and safe time, unless the time spent working in Minnesota on a given day is actually shorter.

Finally, MELC believes that subpart 1(C) could be clearer regarding the intended meaning of a "change in circumstances." To be sure, in many cases (i.e., a promotion or transfer), a "change in circumstances" may be obvious. In other situation, an employee may work more than 50% of their time in Minnesota based on developments over the course of the year, none of which might be considered a "change in circumstances." Assuming that the employer began the year anticipating, in good faith, that the employee would work less than 50% of their time in Minnesota, what is the outcome if the employee ultimately works more than 50% of their time in Minnesota without a "change in circumstances"?

Proposed Rule 5200.1203 – Time Credited and Increments of Accrual

MELC supports the common sense provisions set forth in Proposed Rule 5200.1203 to simplify the process of crediting accrued ESST.

Proposed Rule 5200.1204 – Accrual and Advancing Methods

Likewise, MELC supports the common sense provisions set forth in Proposed Rule 5200.1204 to clarify employers' options and obligations with respect to advancing ESST time for employees.

Proposed Rule 5200.1205 – Employee Use

MELC supports the provisions set forth in Proposed Rule 5200.1205.

Proposed Rule 5200.1205 – Misuse of Earned Sick and Safe Time

MELC supports the important principles underlying Proposed Rule 5200.1206 and appreciates the Commissioner's effort to balance employee rights with appropriate protections for employers against misuse of ESST. However, MELC offers two comments for consideration.

First, in Proposed Rule 5200.1206, subp. 2, MELC recommends that the instances of misuse described in subsections A and B be clarified as examples of misuse, rather than the limited circumstances in which misuse may be found. While the instances described in subsections A and B may be among the most common, other individual circumstances might likewise involve misuse, and MELC proposes that an employer should equally be entitled to the protections of the proposed rule if the evidence demonstrates misuse in other circumstances. Consider the following at Lines 6.1-6.2:

> A pattern of misuse includes, but is not necessarily limited to, evidence that for a claimed unforeseeable use pursuant to Minnesota Statutes, section 181.9447, subd. 2:

By way of example, the proposed rule as drafted only contemplates misuse under circumstances involving "claimed unforeseeable use." However, misuse might also occur if evidence shows that an employee improperly used planned ESST for a non-qualifying reason.

Finally, MELC recommends clarification of employers' rights in the event of misuse, as stated in subp. 3. While it would certainly be appropriate to state that an employer may not deny an employee's use of ESST for a qualifying reason based on previous misuse, the last clause of subp. 3 ("or the employer's suspicion that the employee may misuse earned sick and safe time."), suggests that an employer's hands are tied – that is, even if an employer has identified a pattern of misuse, it must allow the pattern to continue. Respectfully, as drafted, the rule leaves employers deeply uncertain what steps may be taken in the event of misuse. As such, MELC recommends a revision of that subpart to clarify and balance employer rights with appropriate employee protections. Consider the following alternative language:

> **Consequences of misuse.** An employer may not deny an employee accrual or use of earned sick and safe time for a qualifying reason based on previous misuse of earned sick and safe time by the employee, and may not retaliate against an employee for use of earned sick and safe time for a qualifying reason in accordance with Minn. Stat. § 181.0447, subd. 6. Notwithstanding the foregoing, it shall not be considered retaliation in violation of Minn. Stat. § 181.0447, subd. 6, for an employer to do any of the following:
>
> A. requesting documentation consistent with subp. 2,
>
> B. deny an employee use of earned sick and safe time in a manner consistent with the prior pattern of misuse, or

C. discharge or discipline an employee for a pattern of misuse, including but not limited to assigning instances of misuse of earned sick and safe time as unexcused absences pursuant to the employer's absence control policy or attendance point system.

If the Commissioner believes that the foregoing recommendations are not properly included in the rules, MELC respectfully requests that the rules specify more clearly what employers may or may not do in response to a pattern of misuse, to avoid disputes between employers and employees regarding those situations.

Proposed Rule 5200.1207 – More Generous Sick and Safe Time Policies

MELC appreciates the clarification in the Proposed Rule that use of PTO for non-qualifying purposes is not subject to the minimum standards and requirements of the ESST statute.

Nonetheless, MELC respectfully reiterates its prior comment in its September 6, 2024 memorandum to Krystle Conley that application of the ESST minimum standards and requirements to the entirety of an employer's PTO plan is not required by the language of Minn. Stat. § 181.9448. Consistent with legislative history and good policy, the better interpretation of the phrase "for absences from work due to personal illness or injury" in Minn. Stat. § 181.9448 is that Subdivision 1 refers only to categories of paid time off that are specifically designated for sick and safe time purposes, and imposes the requirements of the ESST statute on hours in excess of 48 only if the employer chooses to provide a greater number of hours specifically designated for ESST-qualifying purposes. This interpretation also is consistent with Minn. Stat. § 181.9446(b)(1) ("The total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, *unless an employer agrees to a higher amount*.") (emphasis added). As such, MELC respectfully proposes that Proposed Rule 5200.1207 clarify limits on the effect of the ESST statute consistent with the foregoing.

Thank you for your time and your consideration of MELC's comments; we would appreciate the opportunity for further discussions.

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Ryan Mick
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Cell: 651.442.2862

From:	Boesche, Jonathan
To:	RULES, DLI (DLI)
Cc:	Ischothorst (mnchamber.com); Loesch, Abby; Will Hagen; Steve Barthel; hanna@hospitalitymn.com
Subject:	Joint Comments re: Possible Rules Governing ESST; Revisor"s Number R-04877
Date:	Wednesday, April 2, 2025 2:06:08 PM
Attachments:	Outlook-w1iycimm.png 4.2.25 - Joint Business Organization Comments on Proposed Rules Governing Minnesota ESST.pdf

Please accept the attached written comments regarding the Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877.

These comments are submitted jointly by NFIB, the MN Chamber of Commerce, the MN Business Partnership, Hospitality MN, the MN Grocers Association, and the MN Retailers Association.

Thanks for your consideration.

Sincerely,

Jon Boesche
State Director, Minnesota
O. 651-293--0183
jonathan.boesche@nfib.org
NFIB

April 2, 2025

Krystle Conley, Rulemaking Coordinator
Department of Labor and Industry
Office of General Counsel
443 Lafayette Road North
St. Paul, MN 55155

Re: Comments on Possible Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200; Revisor's ID Number R-04877

On behalf of our organizations, which collectively represent tens of thousands of employers and workplaces across the State of Minnesota, we appreciate the opportunity to provide feedback on the proposed draft rules regarding the Minnesota Earned Sick and Safe Time (ESST) mandate.

Our members span diverse industries and regions, employing hundreds of Minnesotans and contributing significantly to the state's economy. They are committed to fostering strong employer-employee relationships and supporting the well-being of their workforce and communities. We believe that the implementation of ESST must be clear and practical to avoid undue burdens on businesses. Below, we outline our specific concerns and recommendations regarding certain provisions of the proposed rules to improve clarity and feasibility.

5200.1202, Subpart 1: Location of Hours Worked

This proposed rule establishes a 50% threshold for determining whether an employee qualifies for ESST accrual based on the proportion of their work performed in Minnesota. While we appreciate the effort to provide guidance to employers with employees who work primarily outside of Minnesota, we are concerned that this proposed rule is an expansion beyond existing guidance from the Minnesota Department of Labor and Industry (DLI), which, states that "[h]ours worked in Minnesota will apply to ESST accrual."[1] Additionally, while Section

[1] "Minnesota Earned Sick and Safe Time (ESST) - Frequently Asked Questions." *Minnesota Department of Labor and Industry*, https://dli.mn.gov/sick-leave-FAQs#coverage. Accessed 31 Mar. 2025.

181.9445, Subd. 5 defines "employee" as one "who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota," Section 181.9446 (governing accrual of earned sick and safe time) does not explicitly allow for hours worked outside of Minnesota to be counted for purposes of ESST accrual.

Under this proposed rule, employers would have to monitor, not only the location of the hours worked, but also whether employees are meeting specific thresholds (such as more than 50 percent of hours worked in Minnesota) and adjust accrual calculations accordingly. This is particularly challenging for small businesses without sophisticated tracking systems, increasing the risk of errors, disputes, and potential legal liabilities. The proportion of time an employee spends working in Minnesota versus another state can fluctuate significantly from year to year, adding an additional administrative burden to track and recalculate accrual rates based on shifting work patterns. If employers are expected to meticulously track hours worked based on location, we believe it is fair that only hours worked within Minnesota be counted toward accrual of ESST hours.

We recommend that 5200.1202, Subpart 1, be amended to reflect DLI's existing guidance, and specify that ESST accrual is based on hours worked within Minnesota. This approach provides a straightforward and fair method for employers to calculate ESST accrual, while maintaining consistency with current department guidance.

5200.1202, Subpart 3: Indeterminate Shift

This proposed rule introduces a formula for determining the amount of ESST to be deducted for employees working "indeterminate shifts." While we appreciate the attempt to provide flexibility to address these situations, the proposed methodology, which relies on hours worked by replacement workers, similarly situated employees, or the employee's historical average, would create a new level of complexity that would be difficult for businesses to implement consistently. Small businesses, particularly, need a straightforward method by which they can deduct ESST hours and ensure compliance with the mandate.

There are many situations in which an employer may enlist the help of a replacement worker for a lesser period than is needed to cover the absent employee's shift. For example, replacement workers may work fewer hours than are in fact needed due to scheduling availability or overtime considerations. Additionally, requiring an employer to meticulously calculate the appropriate ESST deduction through this proposed method would open the door to unnecessary disputes, increasing an employer's exposure to penalties for violations.

While we agree with efforts to provide employers with the most flexibility to make these determinations, we want to ensure that the process of determining ESST hours deducted for indeterminate shifts is as straightforward as possible. As such, we recommend amending this rule to permit the employer to refer to the hours worked in the most recent similar shift of an indeterminate length worked by the employee using ESST, regardless of whether there was a

replacement worker. This would provide a clearer and more predictable approach for calculating ESST usage during indeterminate shifts.

5200.1204: Accrual and Advancing Methods

We appreciate that this proposed rule acknowledges the flexibility needed for employers who choose to frontload ESST hours and permits pro-rated accrual based on an employee's start date. This option is essential for businesses that hire employees at different points during the year, allowing them to manage their workforce more efficiently while maintaining compliance with ESST requirements.

5200.1206: Misuse of Earned Sick and Safe Time

We appreciate that this proposed rule enhances employer flexibility by allowing them to request documentation when there is a pattern of misuse by the employee. Furthermore, we welcome the clarification that a reasonable request for such documentation in these circumstances is not deemed a retaliatory act.

However, we are concerned that even when an employer identifies a clear pattern of misuse, Subpart 3 effectively mandates that the employer must continue to allow the misuse to occur. To address this issue, we recommend amending this subpart to establish a clear distinction between the legitimate use of ESST for a qualifying purpose and ESST-use that aligns with a documented pattern of misuse. Without such a differentiation, employers who have valid concerns about repeated misuse may be left without an effective means to prevent ongoing abuse.

5200.1207: More Generous Sick and Safe Time Policies

We remain concerned with the requirement that all additional paid time off provided by an employer "must meet or exceed the minimum standards and requirements provided" under the ESST statute. While we appreciate the attempt to specify that these minimum standards and requirements only apply when such excess paid time off is used for a "qualifying purpose," we continue to maintain that any additional paid time off provided by an employer should be exempt from the standards of MS 181.9445 through 181.9448.

Thank you for the opportunity to provide feedback on the proposed ESST rules. We hope the Department will consider our recommendations to simplify compliance obligations and provide balance with the operational realities of employers across Minnesota.

From: Chilco, Sebastian
To: RULES, DLI (DLI)
Cc: Robbins, Holly; Lerner, Shirley; Mills-Gallan, Stephanie
Subject: Submission of Public Comment re: Proposed Permanent Rules Relating to Earned Sick and Safe Time
Date: Wednesday, April 2, 2025 2:27:08 PM

Dear Minnesota Department of Labor and Industry:

We are members of Littler Mendelson's Paid Leave Subgroup, a group of attorneys from across the country that focus on advising employers of all sizes on federal, state, and local paid leave requirements, such as Minnesota's Earned Sick and Safe Time (ESST) law. When the subgroup was formed, there were a handful of laws, mostly at the local level. Since then, however, the number of paid leave laws has increased exponentially. Accordingly, attorneys like us bring to the table a wealth of legal, and historical, knowledge and perspective when it comes to job-protected paid leave.

After reviewing the Proposed Permanent Rules Relating to Earned Sick and Safe Time, we have prepared the below comments.

Thank you for considering the following.

Holly Robbins (Shareholder – Minneapolis, MN)
Shirley Lerner (Senior Counsel – Minneapolis, MN)
Stephanie Mills-Gallan (Shareholder – Milwaukee, WI)
Sebastian Chilco (Attorney – San Francisco, CA)

General Comments

Scope of FAQs Should Not Be Broader than Scope of Regulations

The proposed regulations' scope is narrower than the Department's FAQs. Any standard or interpretation that the Department seeks to establish under the law should be the product of formal rulemaking that is subject to notice and public comment rather than informal guidance (as the Department is doing with certain current proposals, *e.g.*, 5200.1203 TIME CREDITED AND INCREMENTS OF ACCRUAL Subparts 1-2). Accordingly, we strongly encourage the Department to engage in a further round of rulemaking. A byproduct of this review should be to remove from the FAQs any position that the Department is not willing to subject to notice

and public comment then explain the basis therefor; alternatively, the Department should convert any such FAQ into a non-binding "recommendation" rather than a legal "requirement."

Later in our response we identify and provide feedback on certain Department positions in the current FAQs.

Rules Should Clarify Rather than Repeat Standards in the Statute

Job-protected paid leave laws are more dense than other laws, requiring stakeholders to spend considerable time going line-by-line through statutes, rules, and FAQs to understand the law. Where possible, repetition should be avoided. For example, proposed 5200.1200 contains many definitions of terms that simply cite the definition in the statute, which is not necessary.

Specific Comments on Proposed Regulations

5200.1205 EMPLOYEE USE – Subpart 1

Subpart 1 of the proposal provides that "An employer must not require an employee to use earned sick and safe time."

The law says employees *can* use leave for covered reasons, but it would be more beneficial and straightforward to employers *and employees* if the Department interpreted the law to mean that employees *must* use leave when they are absent from work for a covered reason.

Other jurisdictions have taken varied approaches to this issue. Some jurisdictions indicate the choice about whether to use leave belongs to the employee. Others allow employers to designate absences for covered reasons as job-protected paid leave.

Based on our experience with employers of all sizes from around the country, we share concerns expressed by Oregon's Bureau of Labor & Industries in its FAQ on this issue and want to minimize disputes between employers and employees, particularly when they can be avoided:

> **We provide our employees with 40 hours of PTO each year that may be used for vacation or sick leave. My employee does not want to be paid when he is out sick because he wants to save the time for vacation. Do I have to require the employee to take the day as paid sick time?**
>
> Best practice would be to require the employee to take the day as paid sick time. To do

otherwise could lead to problems down the road. But, the law does not mandate that you require employees to take paid sick time. Best practice would be to have the unpaid vacation day discussion once all the employee's sick time has been used, since vacation time is not protected, instead of risking liability for unpaid sick time an employee is otherwise entitled to use.

Numerous legitimate reasons support allowing employers to designate covered absences as ESST covered by the law:

- Public Policy: The goal of job-protected paid leave laws is to eliminate the Catch-22 employees face of having to choose between financial and personal / familial wellbeing. Providing pay and job protections further this goal.
- Legal: Minimize disputes that a company *should have known* the employee wanted to use leave and/or actions taken because job-protected paid leave was *not* applied to the absence.
- Administrative / Practical: Standardize and establish boundaries for the process, which might lessen disruptions to payroll and leaves management administration. If employers spend less time looking backwards they will have more time to look forward.
- Certainty: Minimize the chance that an employee asks to designate prior absences retroactively as paid sick leave after receiving discipline under an attendance policy.
- Employee Relations: Give employees the benefit of the doubt, not only in terms of legal protections but also concerning payment (one might say a double win for employees).

We understand that the Department might be hesitant to encourage the practice due to concerns that its approval might be misinterpreted by *some* employers to allow them to designate *any* absence as paid sick leave, including absences from work that were caused by the *employer*. A solution would be to make clear that designation is allowed only when an *employee* initiates the absence for an ESST reason, like Maine does (12-170-X Me. Code R. § V(E); Maine Department of Labor, Frequently Asked Questions and Answers on Earned Paid Leave (LD 369)).

We would be happy to work with the Department on how, practically speaking, such a process might work.

5200.1206 MISUSE OF EARNED SICK AND SAFE TIME – Subparts 2 & 3

Generally we support the Department's proposal in Subpart 2 to provide an exception to when employers can request documentation to substantiate a need to use paid leave if an employee misuses leave. However, disputes might arise surrounding what "routinely" means. Accordingly, the Department should expand on the term's meaning and provide examples of what constitutes "routinely" misusing leave.

Comparatively few jurisdictions address the issue via statute, regulation, or FAQ, so we thank the Department for doing so. However, we ask that the Department consider not limiting the exception to a "Pattern of Misuse."

For example, San Francisco, California's regulations include an exception to when employers can request documentation not only when there is a pattern of misuse but also when there is a "clear instance" of misuse. San Francisco, CA Rules § 2.4.

Bloomington and Minneapolis, Minnesota use a "clear evidence" standard:

> "Clear evidence" of [] misuse shows that an employee is highly likely to have engaged in an activity that is not consistent with the employee recuperating or otherwise using the time for a legitimate [] purpose. It results in an employer's reasonable, good faith suspicion. It is determined on a case-by-case basis. [] Examples include but are not limited to: (a) using [] hours on days when an employee's request for vacation has been denied, (b) a contemporaneous social media photo or post of the employee that conflicts with [the] stated reason for using [leave], or (c) a consistent pattern of circumstantial evidence.

Bloomington MN, Frequently Asked Questions; Minneapolis MN Department of Civil Rights, Sick and Safe Time FAQs.

Additionally, the Minneapolis FAQs state that "[i]n cases of suspected [] misuse, an employer may review future use with heightened scrutiny." We recommend adopting a similar standard. This might be an appropriate supplement to the Department's proposal in Subpart 3 that employers cannot deny leave based on prior misuse or suspicion that an employee may misuse leave.

5200.1207 MORE GENEROUS SICK AND SAFE TIME POLICIES

Amendments to Minn. Stat. § 181.9448(1) effective January 1, 2025, along with statements that the Department has made online and during presentations, and now in the Department's proposal, have caused confusion and concern with employers offering "more generous" paid leave benefits. This confusion is likely to lead to retrenchment of more generous programs and changes that are unpopular with employees.

Minnesota's ESST law, like other similar laws across the country, establishes "minimum" standards. Minn. Stat. § 181.9448(1)(e). Examples of these "minimum" standards include, but are not limited to, the amount of statutory ESST employees can accumulate in a year or overall. Moreover, although the law is silent on the amount of leave an employee can use in a

year, a policy following the law's "minimum" standards would produce *de facto* use caps.

In establishing a "minimum" standard, the law acknowledged that some companies were providing sub-minimum paid leave benefits, or no benefits whatsoever, without a legal mandate. However, some companies were providing benefits that met or exceeded what the law now requires and *voluntarily* provided benefits to their employees. To avoid disadvantaging more generous companies, the law expressly provides that it does not require them to provide employees ESST in addition to the law's "minimum" amount so long as these benefits meet the law's other "minimum" standards. Minn. Stat. § 181.9448(1)(a).

If an employer's policy or practice falls below a "minimum" standard, a violation can occur. However, if the policy or practice meets *or exceeds* the "minimum" standard, there can be no violation. Moreover, the law encourages employers to adopt or retain policies that exceed its "minimum" standards. Minn. Stat. § 181.9448(1)(a).

Paid Leave Bank Setups Potentially Impacted by Amendments

The new statutory language discusses paid leave *in excess of* the law's *minimum* requirements.

As the new language acknowledges, some employers might voluntarily offer employees a suite of paid leave benefits. The new language expressly excludes certain benefits: short-term or long-term disability or other salary continuation benefits. However, there are significant concerns about how the law applies to other paid leave benefits an employer provides *voluntarily* that are *not* being used to comply with Minnesota's ESST Law.

Some employers offer only one type of paid time off benefit. For example, an employer might only provide paid sick (and/or safe) time to employees, or might only offer combined paid time off (PTO) that an employee may use for *any* reason, such as illness, safe time, vacation, a child's school event during work hours, personal appointments, etc. Given they offer only one type of paid leave benefit, most likely they would use, or revise, that policy to meet their statutory paid sick and safe time obligations.

Other employers offer employees separate banks of vacation and sick leave. To provide even more flexibility to their employees, some companies offer both a bank of PTO and a separate bank of sick leave. In both these examples, the company will use the sick leave bank to comply with any statutory paid sick and safe leave obligations. Moreover, in certain instances the sick leave bank will track requirements under an applicable paid sick and safe leave law, whereas company policy will govern how the other vacation or PTO bank operates.

Some generous companies also offer other types of short- or longer-term paid leave to employees, independent of any legal obligation and in addition to their statutory paid leave

requirement. Leave under some of these policies might be available for personal injury or illness reasons. For example, a company might offer paid pregnancy disability leave independent of its short-term disability policy. A company also might offer a bank of paid leave that employees can use only when unexpected events arise. For example, in recent times many companies voluntarily offered COVID paid sick leave. Many companies also voluntarily offer paid family-medical leave policies that provide for weeks of paid leave, for example, to care for a family member with a serious health condition or to bond with and care for a new child (soon, in Minnesota, this type of leave will be required).

For companies that offer a bank of paid sick and safe leave that meets the statutory "minimum" requirements of Minnesota's ESST Law plus one or more banks of other types of paid leave, the Department should not impose Minnesota ESST requirements on the voluntary paid leave programs when employees use the non-ESST bank for "personal illness or injury" purposes. Doing so would only discourage employers from offering more generous benefits.

Generous Single Bank of Paid Leave Used to Comply with Minnesota ESST Law

Under Minnesota's ESST law, if an employer uses an accrual-based system, the maximum amount of leave an employee can accrue in a year is 48 hours, and the maximum amount of leave an employee can accrue and use across two consecutive years is 96 hours (assuming the employee uses at least 16 hours of leave during this period). If an employer frontloads ESST, the maximum amount of leave an employee can use in a year is 48 or 80 hours, depending on its frontloading compliance approach.

Some employers offer only one type of paid leave benefit and use that benefit to meet their statutory obligations under Minnesota's ESST law. These policies – often developed before a legal requirement existed – provide more leave than the "minimum" amount established under Minnesota's ESST Law. Because these policies were typically in place *before* a legal mandate existed, leave administration might vary from Minnesota's ESST Law. However, to comply with the Minnesota ESST Law's "minimum" standards, the policies generally expressly provide that they follow the Minnesota ESST Law for any qualifying absences thereunder.

We note that companies report that these policies are popular with employees, both because they generally provide more generous time off and because they provide the employee with more flexibility in planning their own time off.

Now, although a company might provide only a single type of paid leave benefit – *e.g.*, paid sick and safe time or PTO – that does not mean its paid leave benefits are not "generous" (at least compared to the Minnesota ESST Law's "minimum" requirements). Many companies annually provide multiple weeks of paid leave, especially for long-time employees. Moreover, the amount of paid leave an employee could accumulate at any future point during their

employment could be substantial. At some of these companies, paid leave is provided up front when employment begins. Some companies generously choose to allow pay-out of accrued, unused leave at termination even though neither the ESST laws nor the common law requires payout.

The Department should not attempt to impose Minnesota ESST requirements and extend Minnesota ESST protections to employees when they use the "more generous" portion of their paid leave bank for "personal illness or injury" purposes. Such an interpretation would differ from how other enforcement around the country have interpreted their laws. For example:

> Arizona: "When an employer's paid leave policy either meets or exceeds the requirements of the Fair Wages and Healthy Families Act, can the employer carve out a specific bank of time that only applies to earned paid sick time? Yes. The Fair Wages and Healthy Families Act does not prohibit tracking earned paid sick time separately from other forms of leave." Industrial Commission of Arizona, Frequently Asked Questions (FAQS) About Minimum Wage and Earned Paid Sick Time.
>
> Illinois: "Employer D did not provide any paid leave to its employees prior to January 1, 2024. On January 1, 2024, Employer D adopts a paid leave policy that provides all employees 40 hours of paid leave, and the terms of that policy comply with all provisions in the Act. The following year, Employer D decides to offer an additional five days of paid leave to its employees who have been employed by them for five years or more. The employer would like to require advanced written notice in order to take that additional leave. The provisions of this Act do not apply to the additional paid leave time the employer has chosen to provide for longer-tenured employees and the employer can set different terms and conditions for use of this leave." Ill. Admin. Code tit. 56, § 200.200(b).
>
> Maine: "My business currently provides sick and vacation days. If those total 5 days or more, am I in compliance with the law? For an existing policy to be in compliance with the Earned Paid Leave law, the existing policy must allow an employee to use up to 40 hours of paid leave per year for any reason. A leave policy must have the following characteristics to be in compliance: . . . If an employer provides more than 40 hours of leave to full-time employees, only 40 hours of leave needs to meet the characteristics of the Earned Paid Leave law. (Example: The employer may allow 40 hours of leave for any reason but allow additional time that may only be used with advance notice (i.e. vacation time.)" Maine Department of Labor, Frequently Asked Questions and Answers on Earned Paid Leave (LD 369).

Similar interpretations exist at the local level. *See, e.g.,* Allegheny County Pennsylvania

Department of Administrative Services, Guidelines for Administering the Allegheny County Paid Sick Leave Ordinance, § 3(j), Pittsburgh Pennsylvania Mayor's Office of Equal Protection, Guidelines for Administering Pittsburgh City Code Chapter 626, Paid Sick Days Act, Guideline 3(j), and Philadelphia Pennsylvania Regulations § 9 (Benefits provided in excess of what the law requires are not subject to the law's requirements).

To be clear, even if a paid leave policy is more generous than the Minnesota ESST Law, Minnesota ESST requirements and protections would still apply when employees use leave under such a policy for a qualifying reason in accordance with – and subject to the limits of – the Minnesota ESST Law. However, the law should not be interpreted to apply to use of more generous benefits when *outside* the limits of the law.

Consider, for example, a company that annually frontloads 200 hours of PTO (2.5 times the maximum amount of leave an employee could use in a year under the 80-hour frontloading approach under the Minnesota ESST Law). When employees use PTO for Minnesota ESST reasons, the policy expressly says that the ESST law controls issues surrounding notice of the need for leave, documenting leave, etc. (and describes those standards). To satisfy the Minnesota ESST law's recordkeeping obligations, the policy expressly requires employees to record when they use PTO for Minnesota ESST purposes. Moreover, the policy expressly states that an employee can record a maximum of 80 hours of PTO use as Minnesota ESST. However, the policy also expressly says that for uses of PTO for non-Minnesota-ESST purposes, or if an employee has already exhausted 80 hours of PTO in a year for Minnesota ESST purposes, separate provisions in the policy concerning employee notice, documentation, and discipline control (and describe what those standards are).

Assume that an employee starts the year with a personal illness and uses 80 hours of PTO. In the middle of the year the employee takes a one-week vacation and uses 40 hours of PTO for non-ESST purposes. And at the end of the same year the employee is injured and needs again to take two weeks off, using the final 80 hours of PTO available.

At the beginning of the year, hypothetically any hour of the 200 hours of PTO may be used in accordance with – and subject to the requirements and protections of – the Minnesota ESST Law. Whether a specific hour qualifies as protected ESST, however, depends on the employee's reasons for using PTO, how much PTO has been used for what reason during the year, and notice, documentation, and recording standards that apply to each absence.

Assuming the employee properly requested, documented, and recorded the first 80 hours of PTO used as Minnesota ESST, those 80 hours would meet the law's minimum requirements and represent use of the maximum number of protected ESST hours the employee could use in a year pursuant to the law's minimum requirements. The 80 hours used at the end of the year, however, are outside the Minnesota ESST Law's scope, standards, and protections.

Were Minnesota ESST standards and protections applied, the more generous company would be held to a higher standard than companies providing the bare minimum amount of leave that the law requires. This could discourage a company from retaining its more generous policy. We cannot express this point strongly enough. Numerous clients have changed their policies or are considering changing their more generous policies out of concern that employees will have, under these generous policies, *hundreds* of hours of protected time off. Some companies are considering replacing PTO policies with separate vacation and sick and safe time policies, which be used only for the intended purposes (in other words, employees could not use vacation time to cover time off for illness or vice versa). Generally, we find that employees prefer the more flexible PTO system, and employers would prefer to retain it. However, when an employer is more generous – providing well more than the requirements of the Minnesota ESST statute – allowing employees to take sometimes *hundreds* of hours of unexpected time off is not feasible.

Personal Illness or Injury if 181.9448 Interpreted Broadly

Assuming the Department intends the interpret and enforce section 181.9448 in a broad manner, such that Minnesota ESST Law standards and protections apply to leave provided in a separate leave bank that is *in addition to* a statutory paid leave bank and/or to the more generous component of a single bank of leave used to meet statutory obligations, the Department should clarify in its regulations that these "heightened" protections and standards apply only if an employee uses such leave for absences connected to "personal injury or illness" – the explicit language of the statute.

We note that the language of the statute is clear. If the legislature intended to include all sick and safe time reasons in this language, it would have done so, but it did not. It carved out "personal injury or illness." The Department's regulations should therefore clarify and provide examples of what does not constitute a personal illness or injury absence. For example:

- Preventive medical or health care (as employee is neither ill nor injured)
- Care of a family member (as the absence would not be personal)
- Business / school or place of care closures due to weather or other public emergency (as employee is neither ill nor injured)
- Bereavement leave (as employee is neither ill nor injured)
- Safe time for issues such as attending court or seeking legal advice (as the employee is neither ill nor injured)

Suggested Additional Rulemaking re: Statutory Requirements

Individual Whose Close Association with the Employee is the Equivalent of a Family

Relationship (181.9445(7)(3))

Under the law, a "family member" includes "any other individual [] whose close association with the employee is the equivalent of a family relationship."

The Department should address the criteria for determining whether a relationship is the "equivalent" of a family relationship.

Designated Person (181.9445(7)(4))

Under the law, a "family member" includes "up to one individual annually designated by the employee." However, the law is silent concerning the designation process. We recommend that employers be explicitly allowed to use an initial designation process during onboarding and an annual designation period thereafter. This system would foster administrative ease, lessen compliance challenges, and help minimize potential disputes.

This proposal is similar to the designation process in Berkeley (Berkeley, CA Code § 13.100.040(B)(3)), Emeryville (Emeryville, CA Code § 5-37.03(c)(1)), Oakland (Oakland, CA Code § 5.92.030(B)(1)), and San Francisco, California (San Francisco, CA Labor & Employment Code § 11.4(a)(4) & San Francisco Office of Labor Standards Enforcement (OLSE), Frequently Asked Questions).

Reasonable Timeframe to Obtain Documentation (181.9447(3)(b)-(c))

Under the law, an employee might be able to provide a written statement in lieu of documentation for sick and safe time absences (other than closure-related ones) if documentation cannot be obtained "in a reasonable time," but the law does not define "reasonable."

Proposing, and receiving input on, what timeframe would be "reasonable" should be a subject of future rulemaking.

Written Statement by Employee in Their First Language (181.9447(3)(f))

Under the law, "[w]ritten statements by an employee may be written in the employee's first language . . . ."

If an employee's first language is not English, and the employer does not have staff that can translate the employee's first language, regulations should require that the employee's written statement be in English or that the employee be required to complete an employer-created verification form in English.

Absence Control Policy or Attendance Point System (181.9447(6)(b))

Under the law, "[i]t shall be unlawful for an employer's absence control policy or attendance point system to count earned sick and safe time taken [] as an absence that may lead to or result in retaliation or any other adverse action."

Many employers adopt programs designed to encourage and reward good attendance, such as the use of perfect attendance bonuses. Similarly, many employers provide holiday pay incentives that grant employees additional compensation for working on days immediately before and after a holiday. In other words, employees are eligible to receive a benefit that they otherwise would not have the opportunity (or legal requirement) to obtain. These neutral policies do not subject employees who use job-protected leave to any adverse consequence in comparison to employees who use unprotected leave. We ask that the Department adopt a rule to clarify that reward programs such as, but not necessarily limited to, perfect attendance bonuses and holiday pay incentives are permissible under the ESST law if neutrally applied.

This approach would align with the standards under other job-protected paid leave laws, *e.g.*:

- Massachusetts (940 Mass. Code Regs. 33.08(4)): "Attendance policies that reward employees for good attendance and holiday pay incentives that provide extra compensation for coming to work on the days immediately before and after a holiday are permissible so long as employees are not subject to any adverse actions for exercising their rights under M.G.L. c. 149, § 148C, and 940 CMR 33.00. An employee's inability to earn a reward for good attendance or to receive a holiday pay incentive based on an employee's absence occasioning use of earned sick time shall not constitute an adverse action or interference with an employee's rights under 940 CMR 33.08."
- Arizona (Industrial Commission of Arizona, Frequently Asked Questions (FAQs) about Minimum Wage and Earned Paid Sick Time): "Is withholding perfect attendance bonuses because of earned paid sick time usage a violation of the Act? Absent additional legislative or judicial guidance, the Industrial Commission does not intend to enforce against employers who deny perfect attendance bonuses to employees who utilize earned paid sick time, provided that employees who have used other leave types are similarly disqualified from perfect attendance bonuses."

For some historical perspective, San Francisco, California was the first generally-applicable mandatory paid sick leave law to take effect. It too includes an "absence control policy" provision. Moreover, its provision mirrors a provision in California's "kin care" law (akin to former Minn. Stat. § 181.9413).

California Kin Care	San Francisco Paid Sick Leave Ordinance
An employer absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.	It shall be unlawful for an employer absence control policy to count paid sick leave taken under this Chapter as an absence that may lead to or result in discipline, discharge, demotion, suspension, or any other adverse action. Protections of this Chapter shall apply to any person who mistakenly but in good faith alleges violations of this Chapter.

The legislative history for SB 1471 (2002) (available here), which added the "absence control policy" provision to California's kin care statute, demonstrates that, although different policies might include attendance as a factor, there is a difference between "negative" and "positive" programs. For example, the analysis prepared for the June 12, 2002 meeting of the Assembly Committee on Labor and Employment noted that "'Absence control' policies provide for discipline of an employee for excessive absenteeism" whereas "'Attendance incentive' policies provide for rewards for employees who meet the attendance threshold established by the employer." In explaining what the legislature intended to accomplish by including the "absence control policy" language in the law, the analysis noted:

> "This bill seeks to close a loophole in current law whereby an employer provides sick leave for an employee, and then penalizes an employee for using that sick leave. This bill seeks to accomplish this by providing that absence control policies which count sick leave used to care for family as absences which may result in discipline, constitute a per se violation of the law relating to sick leave. This bill does not address an employers [sic] use of [] family related illness absences in the calculation of an employee's record for the purposes of attendance incentive policies. . . ."

We encourage the Department to similarly distinguish "positive" and "negative" attendance-related policies for purposes of its law's "absence control policy" provision.

Successor Employers (181.9448(3))

The law imposes obligations on "successor" employers but does not elaborate on the standard for determining whether an employer "succeeds" an employee's existing employer.

The Department should address the criteria for determining "successor" employer status and provide examples of when an employer does (not) constitute a "successor."

Suggested Additional Rulemaking re: FAQs

As we note above, *see* Scope of FAQs Should Not Be Broader than Scope of Regulations, any standard or interpretation that the Department seeks to establish under the law should be the product of formal rulemaking, subject to notice and public comment, rather than informal guidance, and the Department should engage in a further round of rulemaking for this purpose.

Here we identify and provide feedback on certain Department positions in the current FAQs.

Examples of FAQs We Would Support if Proposed as a Regulation

- Can an employee use ESST during times the employer is in operation but the employee is not scheduled to work?
- One allowable use of ESST is when an employee's workplace is closed due to weather or public emergency. If an employer closes the place of business for reasons other than inclement weather or a public emergency, do they need to allow their employees to use ESST?
- Can an employer require an employee to provide notice to use ESST leave?
- If an employee is using ESST for a foreseeable reason such as a yearly check up, and does not notify their employer until the day before the appointment, can the employer deny the employee's use of ESST?
- Can an employer require an employee to provide employee illness log-related information if the employee is using ESST?
- Do hours accrue when the employee is not working (on vacation or out sick)?
- May an employer treat part-time and full-time employees differently? For example, can the employer front load ESST hours for some employees but not others?
- If an employee receives tips as part of their work, is their employer responsible for paying the employee their missed gratuities while on ESST leave?
- If the shift for which an employee takes ESST leave would have brought them into overtime pay had they worked, is the employer responsible for paying an overtime rate for the ESST hours used for that shift?

FAQs That Should Not Be Adopted as a Regulation (Along with Explanation)

- *How does "front loading" versus accrual of hours affect carryover into the next year under Minnesota's ESST law?*

The FAQs say that employers cannot frontload 48 hours for first-year employees then transition to frontloading 80 hours in subsequent years; instead, the FAQs say that the only way to avoid carryover via frontloading without cashing out frontloaded leave at the end of a year is to frontload 80 hours. The statute does not support this interpretation, and it will disadvantage employees.

The maximum number of leave hours a new employee can accrue and use during their first year is 48 hours. Accordingly, employers should be able to frontload 48 hours for first-year employees without carrying over or cashing out unused frontloaded leave, then frontload 80 hours in the subsequent year(s).

Requiring employers to pay out ESST at the end of the first year if they frontload 48 hours disincentives employers to provide this generous benefit. Many employees prefer to receive the full 48 hours of ESST at the beginning of employment instead of waiting to accrue. We have seen employers opt for accrual instead of frontloading when told they will need to pay out the frontloaded amount. This results in delaying benefits to the employee and also results in employees who start later in the year receiving fewer hours of benefits because they do not work enough to accrue the full 48 hours in the first year. The Department should interpret the law to encourage employers to frontload the full 48 hours during the first year of work.

An 80-hour frontload during the initial year of employment would mean that across the first two years of employment an employer would frontload 160 hours. During this two-year period, an employee could – at best – accumulate and use 96 hours. Accordingly, if frontloading according to the FAQs, employees would receive and be able to use 1.67 times more leave than the maximum amount they could during the same period if they had accrued leave instead.

A 48- then 80-hour frontload approach remains more generous than what an employee could accumulate if they accrued leave during the first two years of employment. 128 hours represents 1.33 times more leave. With each additional year of frontloading the "more leave" multiplier would increase, *e.g.*, a 48- then 80- then 80-hour frontload would provide the employee with 208 hours across three years, whereas – at best – they could accrue and use 144 hours during that period (1.44 multiplier).

Additionally, paying out the frontload is against public policy because it disincentives employees from using their ESST. If employees know in advance that they will be paid out for any leave they do not use, they are more likely not to use it, even if they have a qualifying need (particularly if cash-out will occur around/following the holiday season when expenses for many increase). This encourages employees to show up to work sick or unfocused (for family member related events), which decreases their productivity and may adversely affect public health. As we have seen with COVID-19, it is critical that employees use their time off when they may be infectious.

Sebastian Chilco
Attorney at Law
415.439.6267 direct, 415.308.7010 mobile
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Littler
101 Second Street, Suite 1000, San Francisco, CA 94105

From:	Danny Ackert
To:	RULES, DLI (DLI)
Cc:	Mary Krinkie
Subject:	ESST Proposed Rule Comments
Date:	Wednesday, April 2, 2025 3:24:01 PM
Attachments:	Outlook-n12i3zud.png MHA Comments_ESST Proposed Rule_Minn. R. 5200.1200_4.2.2025.pdf

Good afternoon Ms. Conley,

Please find attached the Minnesota Hospital Association's comments on ESST proposed rule, Minnesota Rules, part 5200.1200. Please confirm receipt and let me know if you have any questions.

Have a wonderful day. Thank you!

Danny

Danny Ackert, MPH
Director of State Government Relations
Minnesota Hospital Association
Capitol Ridge Building, 161 Rondo Ave Ste 1010, Saint Paul, MN 55103
c: 616-901-7500
www.mnhospitals.org

Minnesota Hospital Association

Minnesota Hospital Association

161 Rondo Ave., Ste. 1010
Saint Paul, MN 55103
www.mnhospitals.org

April 2, 2025 *Submitted Electronically*

Krystle Conley
Rulemaking Coordinator, Office of the General Counsel
Minnesota Department of Labor & Industry
443 Lafayette Road N.
St. Paul, MN 55155

RE: Comments on proposed rules governing Minnesota Earned Sick and Safe Time (proposed Minn. R. 5200.1200 et seq.)

Thank you for the opportunity to comment on the proposed rules concerning Minnesota's Earned Sick and Safe Time Statute (Minn. Stat. §§ 191.9445 – 181.9448). On behalf of our member hospitals and health systems, the Minnesota Hospital Association (MHA) offers the following comments for consideration.

Proposed Rule 5200.1202 – Hours Worked

Proposed rule should reaffirm that the accrual rules do not apply to persons who are not an "employee" pursuant to the 80-hour threshold set forth in Minn. Stat. 181.9445, subd.5. This would provide additional reassurance that the employer does not need to track hours for individuals that they anticipate will work less than 80 hours in Minnesota during the employer's accrual year.

Additionally, Subpart 3 should be amended to provide additional guidance to employers to address when an employee uses earned sick and safe time (ESST) to cover part of or the entirety of a scheduled partial shift given that this may result in an indeterminate amount of time. Additionally, rule should consider circumstances to exempt employees who do not track time and for whom there often would not be a "replacement worker" or "similarly situated employees." Consistent with Minn. Stat. 181.9446(c), Subpart 3 could confirm that exempt employees are "deemed to work" 8 hours in a workday in Minnesota for purposes of accruing ESST, unless the time spent working in Minnesota on a given day is actually shorter.

Proposed Rule 5200.1203 – Time Credited and Increments of Accrual

Subpart 1 should be amended to reflect that it is often the case that payroll is not processed on the final day of the pay period. Payroll processing typically takes 5 calendar days to complete (3 workdays), and accruals cannot be calculated until payroll systems have finalized the count of hours and calculations of accruals are completed. Subpart 1 should be changed to read "Accrued earned sick and safe time must be credited to an employee no later than the pay date of the pay period in which the hours are worked."

Further, Subpart 3 should be amended to clarify that in situations where employers are using their paid time off (PTO) plans to fulfil ESST requirements and are subsequently paying out unused PTO hours to a terminated employee, there are no ESST hours to be reinstated.

Proposed Rule 5200.1205 – Employee Use

We respectfully urge the Department of Labor and Industry ("the Department") to consider amending the proposed rule to allow employers to require employees to use ESST for qualifying purposes. This otherwise has the potential to place employers in situations where staffing requirements cannot be met, especially in the provision of hospital patient care delivery. For example, as is employees may call in for shifts and request not to use ESST time, and then when they may be at a point where discipline may occur, choose to start using ESST time. The proposed rule should seek to limit this potential scenario.

Proposed Rule 5200.1206 – Misuse of Earned Sick and Safe Time

Subpart 2 should be amended to clearly recognize that the instances of misuse described in subsections A and B are indeed examples of misuse, rather than the limited circumstances in which misuse may be found. While the instances described in subsections A and B may be among the most common, other individual circumstances might likewise involve misuse, and MHA proposes that an employer should equally be entitled to the protection of the proposed rule if the evidence demonstrates misuse in other circumstances. By way of example, the proposed rule as drafted only contemplates misuse under circumstances involving "claimed unforeseeable use." However, misuse might also occur if evidence shows that an employee improperly used planned ESST for a non-qualifying reason

Additionally, subsection B suggests an employee may be misusing ESST by routinely using increments of time of less than 30 minutes at the start of a scheduled shift. However, this scenario can occur at the end of a scheduled shift. We respectfully urge the Department to amend the proposed rules to reflect this and more generally allow employers to identify other potential patterns of misuse.

Lastly, MHA recommends further clarification of employers' rights in the event of misuse. The last clause of Subpart 3 clearly suggests that even if an employer has identified a pattern of misuse, the employer must allow the pattern to continue. Respectfully, as drafted, the rule leaves employers deeply uncertain what steps may be taken in the event of misuse. As such, MHA recommends a revision to clarify and balance employer rights with appropriate employee protection. In sum, MHA respectfully requests that the proposed rules specify more clearly what employers may or may not do in response to a pattern of misuse. This will avoid disputes between employers and employees regarding those situations.

Proposed Rule 5200.1207 – More Generous Sick and Safe Time Policies

Proposed rules should be amended to clarify that employers who provide more generous paid time off benefits should not have to protect the entire paid time off balance if used for ESST qualifying reasons. This policy does not allow an employer to hold employees accountable for attendance policies and creates significant staffing challenges, especially in hospital patient care delivery. For example, an employee may have a balance of 400 paid time off hours, call in every other day citing an ESST qualifying reason, and end up protected for all 400 hours taken. Additionally, if the employee is not taking more than 3 consecutive days off, the employer cannot require proper documentation for the days missed.

In closing, we appreciate the opportunity to provide comments on the proposed rules governing Minnesota Earned Sick and Safe Time (Minn. R. 5200.1200 et seq.), even if the timing is past the statutory implementation of the many ESST provisions that are of great importance to our member hospitals and health systems.

Thank you for your consideration of our comments. Sincerely,

Mary Krinkie
Vice President of Government Relations
mkrinkie@mnhospitals.org

Danny Ackert
Director of State Government Relations
dackert@mnhospitals.org

From: cldnoffice
To: RULES, DLI (DLI)
Subject: ESST
Date: Wednesday, April 2, 2025 3:40:50 PM

Hello,
The wording on this rule seems complicated. I think any business that offers at least or more than 48 hours of Paid Time Off which can be used for any purpose should be exempt from this rule. It adds unnecessary burden to employers who are already offering adequate time off to employees.
Thank you,
Laura

Laura Keating
Office Manager
Civic League Day Nursery
507-282-5368

From:	Angelica D. Guarneros
To:	RULES, DLI (DLI)
Cc:	"Shaunna Johnson (shaunna.johnson@ci.waitepark.mn.us)"; Shawna Boomgarden; Bradley M. Peterson; Brandon Fitzsimmons; Christina C. Petsoulis
Subject:	ESST Proposed Rule Comments
Date:	Wednesday, April 2, 2025 3:59:37 PM
Attachments:	ESST Proposed Rule Comments - CGMC.pdf

Dear Ms. Conley,

On behalf of Coalition of Greater Minnesota Cities, I am writing to submit comments on the proposed draft rules regarding Earned Sick and Safe Time. We appreciate the opportunity to comment on the proposed draft rules. Please see the attached letter.

Thank you for your consideration.

Angel D. Guarneros, Associate Attorney
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525 Park Street, Suite 470
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April 2, 2025

Krystle Conley
Minnesota Department of Labor and Industry
dli.rules@state.mn.us

VIA EMAIL SUBMISSION

Re: Coalition of Greater Minnesota Cities' Comments on Proposed Rules Governing Minnesota Earned Sick and Safe Time Leave, *Minnesota Rules*, Chapter 5200.

Dear Krystle Conley:

On behalf of the Coalition of Greater Minnesota Cities ("CGMC"), we are submitting these comments on the final draft rules regarding the Minnesota Earned Sick and Safe Time Leave ("ESST"). These comments include: (I) Introduction; (II) Background on CGMC and Greater Minnesota Cities; (III) Local Governments Provide Substantial Employee Leave Time; (IV) Concerns with Proposed Rules; and (V) Conclusion.

I. Introduction

Key principles CGMC believes should be reflected in the final rules for ESST are:

1. Sufficient clarity in requiring information for the basis and duration of the requested leave, and, correspondingly, restricting employee abuse and misuse of ESST leave use.

2. Adequate clarification and specificity under 5200.1207 (More Generous Sick and Safe Time Policies), e.g. the requirements and applicability to other leaves.

II. Background on CGMC and Greater Minnesota Cities

The CGMC is a nonprofit, nonpartisan advocacy organization representing over 100 cities outside of the seven-county Twin Cities metropolitan area. CGMC cities are dedicated to a strong Greater Minnesota. CGMC's mission is to develop viable, progressive communities for businesses and families through strong economic growth and good local government. One of the primary purposes of CGMC's Labor & Employee Relations Committee is to develop a coordinated effort among greater Minnesota cities on managing labor and employee relations and negotiating labor contracts through researching and developing databases, advocating positive changes to labor processes, and by providing a forum for networking, discussing and implementing uniform labor policies and negotiating strategies.

Greater Minnesota cities are impactful statewide in local government. The most recent data from the State provides that Greater Minnesota local governments employed a majority of local government employees in the State.[1] Compared to the seven-county Twin Cities metropolitan-area cities, Greater Minnesota cities must often provide and fund more services independently, such as water, wastewater treatment, libraries, and airports, with a substantially lower property tax base per capita to fund these services. As a result, many Greater Minnesota cities struggle to employ sufficient employees for staffing and providing these necessary services. For these reasons, it is critical that the proposed rules for ESST adopted by the Department of Labor and Industry ("DLI") take into account Greater Minnesota cities unique finances, operations, and workplace culture and the substantial negative impact the proposed rules would have on greater Minnesota cities.

III. Local Governments Provide Substantial Employee Leave Time

A recent rapid survey submitted by the CGMC to local governments throughout the State provided that of the nearly 150 local governments responding: over 80% provide paid vacation time leave for employees and compensatory time off, along with over 40% providing paid time off (in lieu of separate sick leave and vacation time) and 100% providing ESST-qualifying time off.[2] These paid time off banks are in addition to family, funeral/bereavement, medical, parental, personal, safety, sick paid leaves provided by Minnesota local governments. Local governments provide a range of 80 to 638 combined hours of paid time off per year for their employees for an average of 264 hours. This equates to approximately 12.68% for each employee's normal work year.

Over 70% of local governments have concerns about their organization's ability to implement ESST leave within their organization. The survey also allowed for open ended questions for organizations to share any policy, staffing, operational, and financial difficulties they had or anticipate experiencing with ESST requirements, with the most reoccurring response reflecting the challenges small employers have with managing staff, employees abuse of ESST leave, tracking leave issues, and overall, budgetary constraints.

The combination of substantial leave time provided by local governments and concerns about implementing ESST with these leaves support that the final ESST rules must provide sufficient clarity in providing authority for employers to require the basis and duration of the requested leave, restricting employee abuse and misuse of ESST leave use, and adequate clarification and specificity under 5200.1207 (More Generous Sick and Safe Time Policies) of the requirements and applicability to other leaves.

[1] *Quarterly Census of Employment and Wages*, Minnesota Department of Employment and Economic Development (3rd Qrtr., 2024), accessed on Apr. 1, 2025, available at https://apps.deed.state.mn.us/lmi/qcew/ResultsDisp.aspx
[2] *Minnesota Paid Leave Rapid Survey*, CGMC, March 2025

IV. Concerns with Proposed Rules

CGMC's concerns with the proposed rules follow:

A. Notice and Abuse and Misuse of ESST

The proposed rules fail to clarify employee notice requirements for use of ESST leave. The proposed rules do not clarify the information and documentation and timing of such for an employee's requested use of ESST. Greater Minnesota Cities have concerns on what they are permitted to do to ensure sufficient notice of the reason and duration of use of ESST. To effectively manage ESST and other employer-provided paid leaves, employers need flexibility to request and/or require certain information and documentation from employees. Thus, we request that the proposed rules include clarification on an employer's authority to request such information and documents and timing of such.

Correspondingly, the proposed rules under section 5200.1206, attempt to address the issue of abuse and misuse of ESST by employees. This section fails to address other patterns of misuse, restricting what employers can determine the employees misuse is for. As set out above, Greater Minnesota Cities have concerns on what they are permitted to do in terms of stopping employee abuse of ESST leave. As many employer cities already provide several types of employer-provided leave, the issue of abuse of ESST arises and employers are unclear on what they are permitted to do to prevent it. Thus, we request that the proposed rules include clarification on section 5200.1206, as for employer's discretion on investigating abuse and misuse of ESST leave.

The specific concern CGMC has on the proposed rules related to adequate clarification and specificity is as follows:

1. Employers need clear authority to request information and/or documentation on the basis for the ESST's requested leave and duration of such to allow for efficient and effective management of such leave.

2. There needs to be unambiguous language providing that employers have the ability to investigate any type of paid leave misuse. While the rules do attempt to prevent abuse of ESST misuse, there needs to be language that allows for more employer discretion to investigate misuse of ESST and other leaves that would not violate ESST laws or rules.

B. Adequate Clarification and Specificity Related to Other Leaves

The proposed rules under section 5200.1207, attempt to clarify coverage and applicability regarding employers' more generous sick and safe time policies. However, it fails to address, with specificity, that the ESST requirements and protections, such as its notice, documentation, replacement worker, and anti-retaliation provisions, do not apply to employer provided leave policies, including, but not limited to: paid time off and vacation. This includes not requiring

employers to extend ESST requirements and protections to non-ESST leave policies. A significant amount of cities in Minnesota employ a small number of employees and often struggle to manage operations when multiple employees have taken leave at the same time. As they are, the proposed rules call into question whether an employee with a PTO policy that provides a greater amount of PTO than is required under ESST must allow employees to use all of the PTO under such a policy as protected ESST for personal illness or injury.

Further, allowing employees to use large amounts of paid leave time with more relaxed notice requirements would promote fraud and abuse of paid leave time as described previously. For example, employees using vacation leave may be required by vacation policies to provide at least two weeks of notice before requesting use of such leave time. If ESST notice requirements apply, an employee may be emboldened to purport that such leave time is for medical purposes, circumventing the two-week notice requirement for use of vacation time.

This would be further exacerbated if employers were required to have all leave policies qualify under the same requirements and protections as ESST. Many municipalities already provide significant and generous paid leave benefits, thus, it is imperative that employers can continue to use their ability to manage their employees, this includes the ability to deny or approve leaves that the employer provides, such as under their PTO or vacation leave policies. As set out above, the data reflects that many employer cities already provide several types of paid leaves, such as PTO, and vacation. If these types of leaves were required to adhere to the same requirements and protections as ESST, employers would have difficulty managing leaves and staffing employees. We therefore propose that the proposed rules include clarification on the proposed rule requirements under 5200.1207, that the requirements for ESST do not apply to other employer provided leave policies, including, but not limited to: paid time off, vacation, and family or safety leave.

Furthermore, the proposed rules need to clarify employers ability to direct ESST leave to be used concurrently with other job-protected leaves, including, but not limited to, leave taken pursuant to the Family and Medical Leave Act (FMLA) of 1993, as well as Minnesota Pregnancy and Parental Leave (PPL), Minn. Stat. 181.941. As stated abundantly above, many cities in Minnesota employ a significantly small number of employees and often struggle to manage operations when multiple employees take leave at the same time. This is further exacerbated when employees are permitted to use these leaves consecutively rather than concurrently and imposes substantial operational burdens on smaller employers, such as municipalities. Many municipalities already provide significant and generous paid leave benefits, thus, it is imperative that employers can require employees to use paid leave time concurrently. We therefore propose that the proposed rules include clarification on employer's ability to direct employees to use ESST leave concurrently with other job-protected leaves, such as FMLA and PPL.

The specific concern CGMC has on the proposed rules related to adequate clarification and specificity are as follows:

1. The proposed rules must include clear language providing that the requirements for ESST do not apply to the other employer provided leave policies. To require

employers to adhere their more generous policies to the requirements and protections of ESST would cause a strain on their ability to manage their employees.

2. The proposed rules need to specify that employers can require that ESST leave be used concurrently with other employer provided leaves.

V. Conclusion

Greater Minnesota local governments employ a majority of local government employees in the State and pay billions of dollars in wages to employees. Due to the extent of service and financial constraints on Greater Minnesota cities, however, they often do not have sufficient resources to keep employees staffed when employees are permitted to use leaves consecutively and on short notice. Greater Minnesota city employers rely on the ability to effectively and efficiently manage operations and to: (1) make sure employees are fit for duty, following existing employer policies, and accountable for taking leave for proper purposes (i.e., no fraud); and (2) ensure employer cities can effectively provide services to their citizens, which include public health and safety services. The deficiencies in the proposed ESST rules lack consideration of staffing issues that many Greater Minnesota cities deal with regularly as evidenced above by the CGMC paid leave survey.

CGMC respectfully requests that you consider and accept the comments made by CGMC to ensure the rules: clearly allow for information and/or documentation from employees on requested ESST leave, address the use of leave under ESST and other types of leaves, and ensure employer's rights are clarified and protected. We appreciate the opportunity to submit our comments.

Thank you for your consideration.

Sincerely,

/s/ Shaunna Johnson
Labor Committee Co-Chair
Shaunna Johnson, City Administrator
City of Waite Park
(320) 252-6822
shaunna.johnson@ci.waitepark.mn.us

/s/ Shawna Boomgarden
Labor Committee Co-Chair
Shawna Boomgarden, Human Resources Director
City of New Ulm
(507) 233-2111
shawnab@newulmmn.gov

cc: Bradley Peterson, Executive Director and Shelly Carlson, President

From:	Huhn, Benjamin
To:	RULES, DLI (DLI)
Cc:	Egan, Kimberly; Meehl, Brenda
Subject:	REQUEST FOR COMMENTS for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877
Date:	Wednesday, April 2, 2025 4:14:27 PM
Attachments:	Outlook-kbkmiqc1.png CentraCare Health MN ESST Comments to DOL April 2025 Signed.pdf

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Department of Labor and Industry
443 Lafayette Road N
St. Paul, MN 55155

Dear Ms. Conley:

Thank you for requesting comments regarding possible rules that govern the new Minnesota Earned Sick & Safe Time regulations. Attached you will find our comments regarding the proposed rule changes for this legislation.

Please contact me if you have questions or would like to have further conversations related CentraCare's concerns surrounding Minnesota Earned Sick & Safe Time.

Sincerely,
Ben

Benjamin Huhn | Executive Director, Total Rewards

P: 320-251-2700, ext. 50348
E: Benjamin.Huhn@CentraCare.com
CentraCare.com

this transmission in error, please notify the sender immediately, reply to this transmission, or contact the CentraCare Information Systems Network Security staff by calling the IS Help Desk for assistance at 320-251-2700, ext. 54540, and delete these documents.

CentraCare®

Human Resources

1406 6th Ave N
St. Cloud, MN 56303

Phone 320-251-2700
Fax 320-656-7022

April 1, 2025

Krystle Conley
Rulemaking Coordinator, Office of General Counsel
Department of Labor and Industry
443 Lafayette Road N
St. Paul, MN 55155

Sent via email:
dli.rules@state.mn.us

REQUEST FOR COMMENTS for Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, 5200.1200; Revisor's ID Number R-04877

Dear Ms. Conley:

Thank you for requesting comments regarding possible rules that govern the new Minnesota Earned Sick & Safe Time regulations. CentraCare Health employs approximately 11,300 casual, reserve, temporary, regular part-time, regular full-time non-union and union employees. We have long-standing paid time off and/or vacation and sick leave benefits for the majority of our employees which provide for greater paid time away than the MN Earned Sick & Safe Time regulations require.

CentraCare is strongly urging the Department to draft or amend rules made to Minnesota Statute surrounding MN Earned Sick & Safe Time as follows:

5200.1202 HOURS WORKED

Subpart 3. Indeterminate shift. How would we handle this if the employee takes ESST for a partial shift?

5200.1203 TIME CREDITED AND INCREMENTS OF ACCRUAL

Subpart 1. Processing and crediting accrual. Payroll is not processed on the final day of the pay period. Payroll processing typically takes 5 calendar days to complete (3 work days), and accruals cannot be calculated until payroll systems have finalized the count of hours and calculations of accruals are completed. This should be changed to read "Accrued earned sick and safe time must be credited to an employee no later than the pay date of the pay period in which the hours are worked."

Subpart 3. Rehire. In situations where employers are using their PTO plans to fulfill ESST requirements and are paying out unused PTO hours to a terminated employee, there are no hours to be reinstated. This needs to be clarified in the rules.

5200.1205 EMPLOYEE USE

Subpart 1. Required use. By not being able to require employees to use earned sick and safe time for a qualifying purpose, this puts employers in a staffing bind. Employees may call in for shifts and request

not to use ESST time, and then when they may be at a point where discipline may occur, choose to start using ESST time**.**

5200.1206 MISUSE OF EARNED SICK AND SAFE TIME

Subpart. 2 Pattern of Misuse. There may be other instances of misuse that are not called out in A. or B. For 24/7/365 operations, employees may routinely use earned sick and safe time on their scheduled work day immediately before or after a scheduled day off (not just weekends, vacations or holidays). In addition, item B suggests an employee may be misusing by routinely using increments of earned sick and safe time of less than 30 minutes at the start of a scheduled shift, but this also happens at the end of a scheduled shift. The Rules need to allow for and call out that these are simply examples, and that other patterns of misuse may be identified by the employer.

5200.1207 MORE GENEROUS SICK AND SAFE TIME POLICIES

Employers who provide more generous paid time off benefits should not have to protect the entire paid time off balance if used for ESST-eligible reasons. This does not allow an employer to hold employees accountable for attendance policies and creates significant staffing challenges. For example, an employee may have a balance of 400 paid time off hours, call in every other day citing it's for an ESST-eligible reason, and end up protected for all 400 hours taken. A business cannot adequately staff in this situation. Additionally, if the employee is not taking 3 consecutive days off, the employer cannot require documentation for the days missed.

If this clause is not retracted, this may force employers to move to separate banks for vacation time and ESST time and, further, not allow employees to use vacation time for ESST eligible reasons, thereby forcing employees to take unpaid time if they have exhausted their ESST balance. Union contracts don't allow employers to unilaterally change to separate vacation and ESST banks. Employees favor more flexible paid time off benefits (not separate vacation and ESST banks). Attempting to negotiate separate vacation and ESST banks will create disagreement and disharmony between the employer and the union. Having a separate ESST bank that is not paid out upon termination creates a use-it-or-lose-it mentality with employees who otherwise like to use their paid time off in a planful manner.

CentraCare is committed to serving our patients and their families 24 hours per day, 7 days per week, every day of the year. To do this, we must be able to provide our employees with benefits that support their careers and personal lives. The changes to MN Earned Sick & Safe Time provide significant challenges to our organization in this area.

Please contact me if you have questions or would like to have further conversations related CentraCare's concerns surrounding Minnesota Earned Sick & Safe Time.

Sincerely,

Signed by:

DFDB817D4DF340F...

4/2/2025 | 2:07 PM PDT

Benjamin Huhn
Executive Director
Total Rewards
CentraCare

From:	Kate Black
To:	RULES, DLI (DLI)
Subject:	Earned sick and safe time, Minnesota Rules, part 5200.1200
Date:	Wednesday, April 2, 2025 5:06:21 PM
Attachments:	AFSCME Council 65 Comment re ESST Minnesota Rules part 5200.1200.pdf

Hello,

Please see attached for AFSCME Council 65's public comment re ESST, MN Rules, part 5200.1200.

Thank you,

Kate Black **(she/her)**
Field Director
AFSCME Council 65 | www.afscme65.org
320-423-2344 | kblack@afscme65.org
3335 W Saint Germain St, Ste 107
St. Cloud, MN 56301

Council 65
AFSCME
Minnesota, South Dakota, North Dakota

April 2, 2025

In re: Earned sick and safe time, Minnesota Rules, part 5200.1200

In response to the March 3, 2025 publication of the proposed rules in the State Register, we wish to provide the following comments regarding Earned sick and safe time, Minnesota Rules, part 5200.1200:

"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 reasonable documentation from an employee when there is a pattern of misuse by the employee. A pattern of misuse occurs when, for a claimed unforeseeable use pursuant to Minnesota Statutes, section 181.9447, subdivision 2: A. an employee routinely uses earned sick and safe time on their scheduled work day immediately before or after a weekend, vacation, or holiday; or B. an employee routinely uses increments of earned sick and safe time of less than 30 minutes at the start of a scheduled shift."

The language specifying an identified "pattern of misuse" exceeds the standards provided by the referenced Minnesota Statute 181.9447, subdivision 2 and in fact serves to provide defined misuse outside of consideration of individual workplaces, employees, any intersection with protected status, any intersection with protected leave time, reasonable accommodations, job duties, varying work schedules, and FTE status. This proposed rule also does not designate what is to be considered a holiday, importantly absent any consideration for varying religious or cultural observances, which also intersects with various rights under other provisions of Minnesota statute including but not limited to 15A.22, 179A.06, and 645.44, Subd. 5. Minnesota Statute does not prescribe a definition for "misuse" of the Earned Sick and Safe Time which working Minnesotans are statutorily entitled to, and to attempt to so narrowly define "misuse" of time Minnesotans spend ill, seeking medical attention, escaping stalking or other forms of domestic violence, or caring for a loved one grossly exceeds the authority of an employer which is granted by statute. With this in mind, we respectfully request reconsideration of the proposed rule 5200.1206 Subp. 2 Pattern of Misuse to more appropriately align with statute and to not include a definition which is not provided by that statute.

The remainder of the proposed rules as last published in the State Register on March 3, 2025 appropriately align with statute and the spirit of the referenced statute.

Thank you,

Shannon Douvier
Executive Director
AFSCME Council 65

American Federation of State, County and Municipal Employees, AFL-CIO
TEL (218) 885-3242 FAX (218) 885-3245 TOLL FREE (888) 474-3242 WEB www.afscme65.org
3335 West St. Germain, Suite 107, St. Cloud, MN 56301

From: Luger, Meg [MN]
To: RULES, DLI (DLI)
Subject: ESST Rules
Date: Wednesday, April 2, 2025 8:57:19 PM

Dear Ms. Conley – Please accept my comments on the ESST rules. I apologize for submitting them after the close of business; I had hoped to submit them earlier but the day overtook me.

1. Accrual year.

Education Minnesota supports having straightforward language that creates a default accrual year. In most instances, I assume employers will designate a fiscal, calendar, or academic calendar year. However, having an intuitive default will be helpful to employees whose employers have not designated a year.

2. Location of work.

Education Minnesota also supports a sensible work location rule that is attuned to the realities of hybrid work, as well as work that may occur in more than one state. This rule gives helpful notice to employers about how to plan for ESST accrual, as well as what obligations may arise if working circumstances deviate from the initial plan.

3. Rehire, accrual

The clarity around proposed rule 5200.1203, subp. 3 is appreciated. In the school setting, employees are sometimes laid off prior to the summer and rehired at the start of the school year. This clarifies what would happen to accrued ESST. It is straightforward guidance for employees and employers.

4. Advancing hours.

Thank you for the rule clarifying the advancement of ESST hours. 5200.1204 will make it easier for employers and employees to distinguish between pure frontloading and advanced accrual. This is especially helpful for the collective bargaining context in which a collective bargaining agreement includes a sick leave accrual formula that results in a “faster” accrual than one hour of leave for thirty hours worked.

More generous leave policies.

5.

Education Minnesota is grateful for the clarification related to the co-existence of ESST and other leave policies. This seems to have been a significant source of confusion to employers. We do not believe that this creates a limitation, but rather clarifies the limits of ESST protections to leave that employees take for qualifying purposes as set forth in the law. We hope that this will reduce, at least somewhat, some of the more confused mythology around the "more generous leave" provision.

Respectfully submitted,
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