

NAVIGATING PAID LEAVES AND OTHER DEVELOPMENTS IN MINNESOTA EMPLOYMENT LAWS (2023)

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Agenda

□ State Laws

- State-Wide Earned Safe and Sick Leave (Jan. 1, 2024)
- State-Funded Family and Medical Leave (Jan. 1, 2026)
- Nursing Mothers/Parental Leave/School Leave (July 1, 2023)
- Banning Non-Competition Agreements (July 1, 2023)
- Minnesota OSHA Updates (July 1, 2023)
- Ban on Captive Audience Speeches (August 1, 2023)
- Ban on inquiring into salary information (January 1, 2024)

Earned Safe and Sick Leave

Earned Sick and Safe Time

- Effective: January 1, 2024.
- Employer Coverage: All employers.
- Eligible Employees: Employees who work at least eighty (80) hours in a year are eligible for paid sick leave benefits. Accruals for sick time commence upon employment.
- Employees earn one (1) hour from every thirty (30) hours worked up to forty-eight (48) in a year. Allowed to carry over up to eighty (80) hours, unless the employer pays out unused leave at the end of the year.
- This new law does not affect city ordinances that provide more generous protections and benefits for employees.

Earned Sick Leave

Reasons for sick leave: In summary, employees are eligible to take paid sick leave for, among other reasons:

(1) their own mental or physical illness, injury or other head condition, including for medical appointments and preventive care;

(2) care of a family member who is sick or needs to attend a doctor's appointment;

(3) absences due to domestic abuse, sexual assault, or stalking, provided the absences is due to:

(i) seeking medical attention;

(ii) obtaining services from a victim services organization;

(iii) counseling;

(iv) relocating due to the abuse, assault or stalking; or,

(v) seeking legal advice or taking legal action.

Earned Sick Leave

- (4) closure of the employer's business due to weather or public emergency or to take care of a family member whose school or place of care has been closed due to weather or public emergency;
- (5) the employee's inability to work or telework due to health concerns related to:
 - (i) potential transmission of a communicable illness related to a public emergency; or,
 - (ii) seeking or waiting for a diagnostic test of a communicable disease that is a public emergency; or,
- (6) when a health care provider has determined the employee's presence would jeopardize the health of others because of exposure of the employee or a family member to a communicable disease.

Earned Sick Leave

□ Family Member is defined as:

1. An employees:

- child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in loco parentis;
- spouse or registered domestic partner;
- sibling, stepsibling, or foster sibling;
- biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child;
- grandchild, foster grandchild, or stepgrandchild;
- grandparent or stepgrandparent;
- a child of a sibling of the employee;
- a sibling of the parents of the employee; or
- a child-in-law or sibling-in-law;

Earned Sick Leave

- Family Member is defined as:

2. any of the family members listed in clause (1) of a spouse or registered domestic partner of the employee;
3. any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
4. up to one individual annually designated by the employee.

Earned Sick Leave

- Notice Requirements:
 - If leave is foreseeable, employers may require employees to provide up to seven (7) days' advance notice of the intention to use sick leave.
 - If leave is unforeseeable, employers may require an employee to give leave notice as soon as practical.
 - Written Policy Requirement: A written policy must be developed if an employer requires advance notice of the need to use paid sick leave and the procedure for providing such notice. If the policy has not been provided to the employee, the employer cannot deny the use of sick leave.

Earned Sick Leave

□ Documentation:

- Employers may request reasonable documentation for leaves of more than three (3) consecutive days. Reasonable documentation may include:
 - a signed statement from a health care provider indicating the need for use of earned sick time unless cannot be obtained within a reasonable time or without added expense;
 - A written statement from the employee when used for allowed care of a family member; or
 - A court record or document from a victims' services organization, police officer, attorney, or anti-violence counselor

An employer cannot require disclosures relating to domestic abuse, sexual assault, stalking or the details of an employee's or family member's medical history.

□ Non-Retaliation:

- Employers cannot retaliate against employees for using paid sick leave.

Notice and Posting

- Statement to employees:
 - ▣ Must be in English and the employee's primary language
 - ▣ Must give notice to employees of their right to use earned sick and same time
 - ▣ Must give employees a statement containing:
 - their earned sick time and amount used;
 - the accrual year and the terms of use;
 - a copy of the written policy;
 - that retaliation is prohibited, and
 - right to file a complaint or bring a lawsuit if retaliated against.

- The notice can be accomplished by:
 - ▣ Posting
 - ▣ Providing paper or electronic copy to employee;
 - ▣ Web-based or app-based platform

- Handbooks must provide notice of employee rights and remedies

Carry-Over Issues

- Employees are allowed to carry over accrued and unused earned sick time.
- The total amount of accrued and unused earned sick time may not exceed eighty (80) hours at any time unless the employer agrees.
- In lieu of permitting carryover, employers may provide an employee with:
 - 48 hours earned sick time at the beginning of the subsequent year and payout unused time; or
 - 80 hours earned sick time at the beginning of the subsequent year if employee forfeits unused time

Earned Sick Leave

- Confidentiality Of Use of Earned Sick and Safe Time:
 - Reasons for use must be kept confidential;
 - Must be maintained separate from the personnel file;
 - Are not required to pay out earned sick time upon termination; and,
 - However, if employee is rehired within 180 days, must reinstate earned sick time.

Enforcement

- Grants will be given to “community organizations” for purposes of outreach and education.
- Responsibility of all employers not to enter into any contract or agreement where employee has knowledge that contractor is not comply or has failed to comply with the law.
- Employees have three years to bring action

Current City Ordinances & Earned Sick and Safe Time

	Bloomington*	Duluth	Minneapolis	St. Paul
Accrual Rate	1 hour of ESST /30 hours worked	1 hour of ESST/50 hours worked	1 hour of ESST/30 hours worked	1 hour of ESST/30 hours worked
Usage	May begin using ESST on the 91st day of employment	May begin using ESST on the 91st day of employment	Employer may enforce a 90-day waiting period before allowing employees to use ESST	May begin using ESST on the 91st day of employment
Accrual Cap	Can earn up to 48 hours per year, employer may allow more	Can earn up to 64 hours per year, employer may allow more	Can earn up to 48 hours per year, employer may allow more	Can earn up to 80 hours per year, employer may allow more
Carryover	Allowed to carry forward 80 hours into the following year, unless employer allows more	Allowed to carry forward 40 hours into the following year	Allowed to carry forward 80 hours into the following year, unless employer allows more	Allowed to carry forward 80 hours into the following year, unless employer allows more

*Effective July 1st, 2023.

Paid Family Medical Leave

Paid Family Medical Leave

- Effective: January 1, 2026.
- Employer Coverage: All employers.
- Employee Eligibility: After ninety (90) days of employment, employees are eligible to participate in this program.
- Funding: Employers fund at least half the program through a payroll tax.
- Benefits Available: Based upon a progression scale. Lower-income workers will earn a higher % of their wages while on leave. The % of income will decrease as workers earn more.
- Reinstatement: Employees are entitled to their job after completing their leave if they have been in the position for at least 90 days.

Paid Family Medical Leave

- Under the paid family medical leave law, employees are eligible to receive:
 - ▣ up to twelve (12) weeks of paid leave for their own serious health condition or pregnancy **and**
 - ▣ up to an additional twelve (12) weeks of paid leave to care for a newborn, adopted or foster child, for safety leave or to care of a family member who has a serious health condition.
 - ▣ Leave is capped at twenty (20) weeks in a single benefit year.

- Claims must be based on a single qualifying event of at least seven (7) calendar days (except for bonding leave for parents in connection with birth, adoption, or foster child placement).

Paid Family Medical Leave

- “Family member” includes:
 - Spouses (including legally-recognized domestic partners);
 - Child, including a biological, adopted, or foster child, a stepchild, or a child to whom the applicant stands in loco parentis, is a legal guardian, or is a de facto parent;
 - Parents and legal guardians;
 - Sibling;
 - Grandchild;
 - Grandparent or spouse’s grandparent;
 - Son in law or daughter in law; and
 - an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together.

Paid Family Medical Leave

- “Safety leave” means leave because of domestic abuse, sexual assault, or stalking of applicant or applicant’s family member, provided the leave is to:
 - Seek medical attention related to physical or psychological injury or disability caused by the abuse/assault/stalking;
 - Obtain services from a victim services organization;
 - Obtain psychological or other counseling;
 - Seek relocation due to abuse/assault/stalking; or,
 - Seek legal advice or legal action, including preparing for or participating in any civil or criminal legal proceeding related to, or resulting from, the abuse/assault/stalking.

Paid Family Medical Leave

- “Serious health condition” includes, but is not limited to:
 - Inpatient care in a hospital, hospice, or residential medical care facility, and
 - Continuing treatment or supervision by a health care provider including one (1) or more of the following:
 - A period of incapacity of seven (7) or more full, consecutive days, and subsequent treatment:
 - (a) requiring two (2) or more treatments within thirty (30) days of the first day of incapacity, or
 - (b) requiring a regimen of continuing treatment;
 - A period of incapacity due to pregnancy; or,
 - A period of incapacity for a chronic health condition that requires periodic healthcare-provider visits (at least two (2) a year), continues over an extended period of time, and may cause episodic periods of incapacity.

Paid Family Medical Leave

- Continuing treatment or supervision by a health care provider including one (1) or more of the following:
 - a period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The applicant or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider; or
 - a period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for:
 - restorative surgery after an accident or other injury; or
 - a condition that would likely result in a period of incapacity of more than seven full calendar days in the absence of medical intervention or treatment.

Nursing Mothers

Accommodating Nursing Mothers, Lactating Employees, and Pregnancy

- Effective: July 1, 2023.
- Applicability: Employers with one or more employees.
- Notice Requirements: Employers must inform employees of their pregnancy and lactation accommodation rights at the time of hire and when an employee asks about or requests parental leave.
- Employers must include a notice of such rights in the employee handbook. The Commissioner of MN Department of Labor and Industry will be publishing the required notice.

Accommodating Lactating Employees

- Employers must provide reasonable breaks for employees to express milk.
 - ▣ There is no time limit on providing these breaks. Previously, the original law only applied to the first 12 months after childbirth.

- Employers cannot refuse reasonable break time for expressing milk.
 - ▣ Previously, the original law permitted employers to deny breaks if doing so would unduly disrupt operations.

- Workplace lactation space must be a “clean, private, and secure” room or other location, close to the work area.

Pregnancy Accommodations

- Accommodations:
 - Pregnancy employees are not required to obtain medical advice, nor employers may no longer claim *undue hardship* for the following pregnancy accommodations:
 - More frequent or longer restroom, food, and water breaks;
 - Seating; and
 - Limits on lifting over 20 pounds.
 - Newly added reasonable accommodations under this bill include:
 - Temporary leaves of absence
 - Modification in work schedule or job assignments
 - More frequent or longer break periods

- Reinstatement rights: Employees who take a leave under section 181.939 (protections for nursing mothers, lactating employees, and pregnancy accommodations) have the right to
 - Return to their previous position; OR
 - Be placed in a comparable position with similar duties, number of hours, and pay.

Parental Leave, School Leave, Sick Leave

Parental Leave, School Leave, Sick Leave

Definition of Employee Amended:

- Now includes all employees
 - ▣ Change from employees needing to work at least 12 months and at least one-half a full-time equivalent.

Definition of Employer Amended:

- Now includes all employers
 - ▣ Change from employer with 21 or more employees.

Changes Effective July 1, 2023

Parental Leave, School Leave, Sick Leave

Parental Leave:

- All employer must now provide an unpaid leave of absence to an employee who is:
 - ▣ A biological or adoptive parent in conjunction with the birth or adoption of a child; or
 - ▣ A female employee for prenatal care, or incapacity due to pregnancy, child birth or related health condition;
 - ▣ Leave can be for up to 12 weeks.

School Leave:

- All employers must now grant an employee leave up to a total of 16 hours during a 12 month period to attend school conferences or school related activities.

Sick Leave Benefits:

- All employers must now allow employees to use personal sick leave benefits for absence due to an illness or injury of the employee child, employees adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.

Changes Effective July 1, 2023

Non-Competition Ban

Ban on Non-Compete Agreements

- Effective: July 1, 2023. Does not apply retroactively.
- Applicability: Individuals who reside or work in Minnesota - Employees and independent contractors.
- Agreements that prevent the following after termination of employment are banned:
 - ▣ Work for another employer for a specified time;
 - ▣ Work in a specified geographical area; or
 - ▣ Work for another employer in a capacity that is similar to the employee's work for the employer that is party to the agreement.
- Previously, courts had restricted the duration and scope of non-compete agreements.

Non-Competition Ban

- The following agreements are still permitted:
 - nondisclosure agreements, or agreements designed to protect trade secrets or confidential information;
 - non-solicitation agreements, or agreements restricting the ability to use client or contact lists or solicit customers of the employer.
 - non-compete agreements that are agreed to as part of the sale of a business.
 - non-compete agreements that are agreed to in anticipation of the dissolution of a business.

- Existing requirements for enforceability (e.g., offer, acceptance, consideration) continue to apply to these agreements.

- Employees can seek attorney fees if employer seeks to require banned agreement.

Minnesota OSHA Changes

Minnesota OSHA Changes

Inspections:

- Employers and its representatives, including management, attorneys and consultants may not be present for an employee interview

Citation Information:

- Public data after 20 days of receipt of citation;
- Includes employer's name, address, address of worksite, date of inspection, date of citation, standard alleged to have been violated, the severity of the citation, the description of the violation, the proposed abatement date and proposed penalty.

Contestation of Time for Correction:

- Period to fix a correction does not run for a violation that is not serious, willful or repeat until Commissioner's Order is final
- Serious, Willful and Repeat Citations can be referred for an expedited case hearing solely on the reasonable of the time fixed for correction. The ALJ may order the employer to correct the violation pending final resolution of the cited violations on the merits.

Changes Effective July 1, 2023

Minnesota OSHA Changes

Conformity with Federal Penalty Amounts:

- Willful or Repeat Penalties increase from a maximum of \$70,000 to \$156,259
- Serious Penalties increase from a maximum of \$7000 to \$15,625
- Serious violations which cause or contribute to a death of an employee shall be \$25000 **for each violation**
- Nonserious violations increase from a maximum of \$7000 to \$15,625
- Failure to Abate penalties increase from a maximum of \$7000 to \$15,625
- Penalties will increase to the amounts as set forth by the federal government.

Changes effective August 1st

Ban on Captive Audience Meetings

Ban on Captive Audience Speeches: Minn. Stat. Sec. 181.531

- Employers cannot discharge, discipline or otherwise penalize or threatened adverse action against an employee: :

(1) because the employee declines to attend or participate in an employer-sponsored meeting or declines to receive or listen to communications from the employer or the agent, representative, or designee of the employer if the meeting or communication is to communicate the opinion of the employer about religious or political matters;

(2) as a means of inducing an employee to attend or participate in meetings or receive or listen to communications described in clause (1); or

(3) because the employee, or a person acting on behalf of the employee, makes a good-faith report, orally or in writing, of a violation or a suspected violation of this section.

Ban on Captive Audience Speeches: Minn. Stat. Sec. 181.531

Scope. This law does not:

(1) prohibit communications of information that the employer is required by law to communicate, but only to the extent of the lawful requirement;

(2) limit the rights of an employer to conduct meetings involving religious or political matters so long as attendance is wholly voluntary or to engage in communications so long as receipt or listening is wholly voluntary; or

(3) limit the rights of an employer or its agent, representative, or designee from communicating to its employees any information that is necessary for the employees to perform their lawfully required job duties.

Posting Requirement:

Employers are required to post and keep posted a notice of employee rights under this law.

Ban on Captive Audience Speeches: Minn. Stat. Sec. 181.531

Definitions:

(1) "political matters" means matters relating to elections for political office, political parties, proposals to change legislation, proposals to change regulations, proposals to change public policy, and the decision to join or support any political party or political, civic, community, fraternal, or labor organization; and

(2) "religious matters" means matters relating to religious belief, affiliation, and practice and the decision to join or support any religious organization or association.

Ban on Captive Audience Speeches: Minn. Stat. Sec. 181.531

Remedies:

An aggrieved employee may bring a civil action no later than 90 days after the date of the alleged violation.

The court may award a prevailing employee all appropriate relief, including injunctive relief, reinstatement to the employee's former position or an equivalent position, back pay and reestablishment of any employee benefits, including seniority and any other appropriate relief as deemed necessary by the court to make the employee whole.

The court shall award a prevailing employee reasonable attorney fees and costs.

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Effective August 1, 2023

Inquiries into Applicant's Salary History

Inquiries into Applicant's Salary History

Effective January 1, 2024:

- Employers will be prohibited from inquiring into, considering or requiring disclosure from any source the pay history of an applicant
- Does not prevent applicants from voluntary disclosing pay history
- Does not prohibit discussion with applicant as to salary expectations

Veterans' Benefits and Services

Veterans' Benefits and Services

Mandatory Poster:

The poster must, at a minimum, include information regarding the following benefits and services available to veterans:

- (1) contact and website information for the Department of Veterans Affairs and the department's veterans' services program;
- (2) substance use disorder and mental health treatment;
- (3) educational, workforce, and training resources;
- (4) tax benefits;
- (5) Minnesota state veteran drivers' licenses and state identification cards;
- (6) eligibility for unemployment insurance benefits under state and federal law;
- (7) legal services; and
- (8) contact information for the U.S. Department of Veterans Affairs Veterans Crisis

Must post by January 1, 2024

QUESTIONS?

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THANK YOU!