

Earned Safe and Sick Time Law & Other Items



Littler

Presented by



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Shareholder

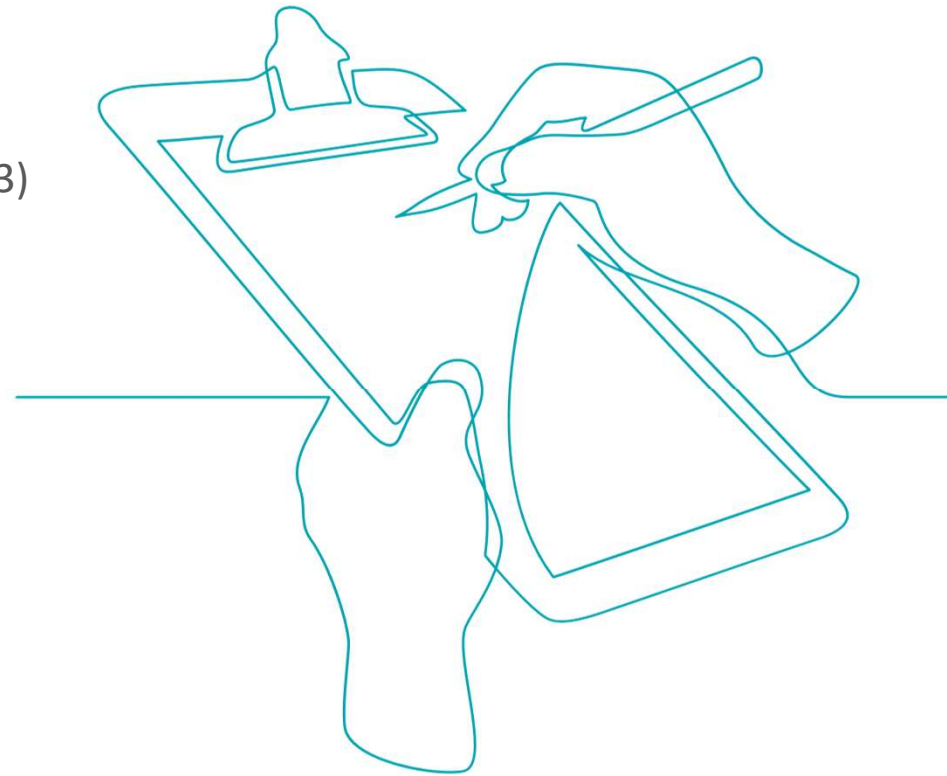
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Agenda

- State-Wide Earned Safe and Sick Leave (Jan. 1, 2024)
- Ban on inquiring into salary information (January 1, 2024)
- Nursing Mothers/Parental Leave/School Leave (July 1, 2023)
- State-Funded Family and Medical Leave (Jan. 1, 2026)





Earned Safe and Sick Leave

Earned Sick and Safe Time

- **Effective**: January 1, 2024.
- **Applicability**:
 - All employers.
 - All employees who work at least eighty (80) hours in a year with accruals commencing upon employment
- **Accrual Amount**: 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.

Earned Sick Leave

Reasons for sick leave:

1. The employee's own mental or physical illness, injury or other health condition, including for medical appointments and preventive care;
2. To care of a family member who is sick or needs to attend a doctor's appointment;
3. For absences due to domestic abuse, sexual assault, or stalking, provided the absences is due to:
 - seeking medical attention;
 - obtaining services from a victim services organization;
 - counseling;
 - relocating due to the abuse, assault or stalking; or,
 - seeking legal advice or taking legal action.

Earned Sick Leave

4. Due to 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. Due to the employee's inability to work or telework due to health concerns related to:
 - the potential transmission of a communicable illness related to a public emergency; or,
 - the employee 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 to a communicable disease.

Earned Sick Leave

- Employee's family members are broadly defined and include:
 - 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, step-sibling, or foster sibling;
 - biological, adoptive, or foster parent, step-parent, or a person who stood in loco parentis when the employee was a minor child;
 - grandchild, foster grandchild, or step-grandchild;
 - grandparent or step-grandparent;
 - niece or nephew;
 - aunt or uncle; or
 - a child-in-law or sibling-in-law;

Earned Sick Leave

- Employee's family members are broadly defined and include:
 - any of the family members listed for an employee's spouse or registered domestic partner;
 - any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
 - Any one individual designated annually by the employee.

Earned Sick Leave

- **Employee Notice Requirements:**

- (1) If leave is foreseeable, employers may require employees to provide up to seven days' advance notice of the intention to use sick leave.

- (2) If leave is unforeseeable, employers may require an employee to give leave notice as soon as practical.

- **Written Policy Requirement:** Employers must develop a policy if they require advance notice of the need to use paid sick leave and the procedure for providing such notice. If such a policy has not been provided, the employer cannot deny the use of sick leave.

Earned Sick Leave – Written Policy Requirement

- **Written Policy Requirement:**

- Employers can comply by using existing PTO, vacation or sick leave policy;
- The policy must provide time-off for reasons allowed under ESST and meet or exceed the legal requirements under ESST.
- Accrual for ESST is based upon hours worked.
 - Overtime counts
 - Salaried employees are presumed to work 40 hours.
- Accrual for ESST is calculated at the same frequency as the employer’s other typical payroll practices (i.e., by pay period whether weekly, biweekly, monthly, etc) Amount available and used must be listed on the employee’s earning statement (i.e. paystub).
- Accrual year – can be calendar year, employee’s anniversary year, tax year, etc.

Front-loading vs. Carry-Over Issues

- “Front loading” of ESST hours is an alternative method for providing ESST accrual to employees. This option allows employers to record accrual of ESST once a year and avoid carry over of hours from year to year. Some employers may want to use this method to reduce the calculations and recordkeeping required for accrual by pay period (weekly, biweekly, twice monthly or monthly).

Front-loading vs. Carry-Over Issues – Options

Option 1. Accrual and carryover:

- employees begin accruing ESST from their first day of employment;
- ESST accrues at a rate of at least one hour for every 30 hours worked;
- employees are permitted to accrue a minimum of up to 48 hours of ESST in a year (more if the employer agrees to a higher amount); and
- employees carry over unused ESST into the next year. However, at no time can an employee's accrued ESST exceed 80 hours (unless the employer agrees to a higher amount).

Option 2. Front loading with pay out and no carryover:

- A minimum of 48 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- unused ESST hours are paid out at the end of the accrual year at the employee's hourly rate.

Option 3. Front loading with no pay out and no carryover:

- A minimum of 80 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- the ESST hours the employee did not use are not paid out at the end of the accrual year.

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 such a statement 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
- Employer cannot require employees to disclose information related to domestic abuse, sexual assault, stalking or the details of an employee's or family member's medical history.
- Employers cannot retaliate against employees for using paid sick leave.

Notice To Employees and Posting Requirement

- Notice 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 safe time
 - Must give employees a statement containing:
 - their earned sick time and amount used (in earnings statement);
 - 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

Earned Sick Leave

- Confidentiality:
 - Reasons for using safe and sick time must be kept confidential;
 - Information on use must not be maintained in the personnel file
- “Community organizations” are given grants for outreach and education.
- Employees have three years to bring action

More Information on Earned Sick And Safe Time

[HTTPS://WWW.DLI.MN.GOV/BUSINESS/EMPLOYMENT-PRACTICES/FAQS-EARNED-SICK-AND-SAFE-TIME-ESST](https://www.dli.mn.gov/business/employment-practices/faqs-earned-sick-and-safe-time-esst)

FAQS: EARNED SICK AND SAFE TIME (ESST)

Contents

- [Fast facts](#)
- [Basic information](#)
- [General questions](#)
- [Earning hours: Accrual, front-loading and carryover](#)
- [Using ESST hours](#)
- [Rates of pay](#)
- [Recordkeeping and notice to employees](#)
- [Complaints](#)

More Information on Earned Sick And Safe Time

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Added Dec. 4, 2023: How does an employer determine the hourly rate for an employee who is paid based on productivity, commission or a daily rate?

- Employers should ensure that employees receive ESST at a rate equivalent to the hourly rate they would earn from employment, and in no case can ESST be paid at a rate below the applicable minimum wage.
- Some employers pay employees through piece rates, by the mile, a daily rate or another non-hourly rate. An employer who uses one of these types of pay systems could calculate an hourly rate for employees by, for example, using an employee's last several paychecks to divide their total gross earnings by their total hours worked to determine an hourly rate for ESST purposes.
- Similarly, an employer could calculate the hourly rate of employee's provided daily pay by dividing their average number of hours worked per day by their daily pay rate.
- As previously stated, the hourly rate arrived at must be at least the applicable minimum wage.

For trucking industry employers, there may be other methods to calculate an hourly wage that would be more appropriate. No matter what method is used, the employer's rate must at least be the state or applicable local minimum wage.

More Information on Earned Sick And Safe Time

- **How should hours be accrued for purposes of ESST if the hours are not front loaded?**

- *Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, up to at least 48 hours a year, unless the employer front loads at least 48 hours at the beginning of the accrual year. While the ESST law does allow employers of federally exempt professional, administrative and executive employees to assume a 40-hour workweek for those employees, it does not include this allowance for state and federally exempt truck drivers.*

- *The ESST law requires employers to retain accurate records documenting hours worked by employees and ESST taken (Minn. Stat. §181.9774, subd. 10). This is an obligation separate and distinct from the obligations in chapter 177. So, while some truck drivers are excluded from the definition of employee in Minn. Stat. § 177.23, they are not excluded in the ESST law. Similar to determining the hourly wage rate, employers of these employees could create a method to calculate the number of hours an employee worked during a pay period, which could then be used to determine the number of ESST hours the employee accrued. As mentioned in the first sentence, an alternative to the ESST accrual system is front-loading. For more information about front-loading options see DL ESST FAQ question, “How does “front loading” versus accrual of hours affect carryover into the next year under Minnesota’s ESST law?,” here: www.dli.mn.gov/business/employment-practices/faqs-earned-sick-and-safe-time-esst#earninghours*

More Information on Earned Sick And Safe Time

<https://www.dli.mn.gov/sick-leave>

- Additional resources will be added as they become available.
- Employee notice: [Word](#) | [PDF](#)
- Fact sheet: [English](#), [Amharic](#), [Chinese](#), [Hmong](#), [Karen](#), [Laotian](#), [Oromo](#), [Somali](#) and [Spanish](#) and [Tigrinya](#)
- [FAQs](#)
- Grants: [Earned sick and safe time outreach](#)
- Video overview: [English](#), [Hmong](#), [Somali](#) and [Spanish](#)
- Workplace poster: [English](#)
- [Sign up for email updates about earned sick and safe time](#)



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 voluntarily disclosing pay history
- Does not prohibit asking applicant their salary expectations



Veterans' Benefits and Services

Veterans' Benefits and Services

- Mandatory Poster for January 1, 2024:
 - The poster must, at a minimum, include information regarding the following benefits and services available to veterans:
 - contact and website information for the Department of Veterans Affairs and the department's veterans' services program;
 - substance use disorder and mental health treatment;
 - educational, workforce, and training resources;
 - tax benefits;
 - Minnesota state veteran drivers' licenses and state identification cards;
 - eligibility for unemployment insurance benefits under state and federal law;
 - legal services; and
 - contact information for the U.S. Department of Veterans Affairs Veterans Crisis



Nursing Mothers

Accommodating Nursing Mothers, Lactating Employees, and Pregnancy


- Effective: July 1, 2023
- Applicability: All employers.
- 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.
- Handbook Update: Employers must include a notice of such rights in the employee handbook. DOLI has published the required notice.

Pregnancy Accommodations

- Accommodations:
 - Pregnant employees are not required to obtain a doctor's note and employers may no longer claim undue hardship for the following pregnancy accommodations:
 - More frequent or longer restroom, food, and water breaks;
 - The need to sit; and
 - Inability to lift over 20 pounds.
 - Under the law, reasonable accommodations include:
 - Temporary leaves of absence
 - Modification in work schedule or job assignments
- Right to reinstatement: Employees who take a leave under this law have the right to
 - Return to their previous position; OR
 - Return to comparable position with similar duties, number of hours, and pay.

Accommodating Lactating Employees

- Employers must provide reasonable breaks for employees to express milk.
 - There is no time limit on providing these breaks.
 - The breaks can continue beyond the first 12 months after childbirth.
- Workplace lactation space must be a “clean, private, and secure” room or other location, close to the work area.



**LEAVE OF ABSENCE
REQUEST**

sick
leave

**Parental Leave,
School Leave,
Sick Leave**

Parental Leave, School Leave, Sick Leave

- Effective Date: July 1, 2023
- Applicability:
 - All employers (previous law only applied to employers with 21+ employees)
 - All employees (previous law only applied to employees working at least 12 months and at least one-half FTE).

Parental Leave, School Leave, Sick Leave

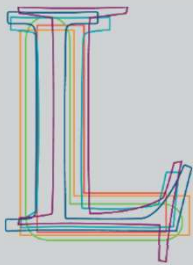
- **Parental Leave:**
 - All employer must provide employees with an unpaid leave of absence of up to 12 weeks for:
 - The birth or adoption of a child; or
 - Prenatal care, or incapacity due to pregnancy, childbirth or related health condition;
- **School Leave:**
 - All employers must now grant employees 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, employee's adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent, or stepparent.



Paid Family Medical Leave

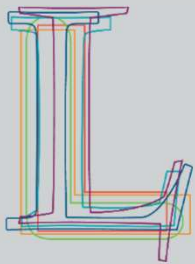
Paid Family Medical Leave

- Effective: January 1, 2026.
- Applicability:
 - All employers.
 - All employees are ninety (90) days of employment.
- Funding: Employers fund at least half the program through a payroll tax.
- Benefits Available: Based upon a progression scale similar to unemployment insurance.
- Reinstatement: Employees are entitled to their job after completing their leave if they have been in the position for at least 90 days.



Questions?

This information provided by Littler is not a substitute for experienced legal counsel and does not provide legal advice or attempt to address the numerous factual issues that inevitably arise in any employment-related dispute. Although this information attempts to cover some major recent developments, it is not all-inclusive, and the current status of any decision or principle of law should be verified by counsel.



Thank You!

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