

MNDOLI Issues Guidance on Minnesota Statewide Paid Earned Sick and Safe Time Law

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Looking ahead to January 1, 2024, when Minnesota's statewide paid Earned Sick and Safe Time (ESST) law takes effect, the Minnesota Department of Labor and Industry (MNDOLI) issued guidance in the form of answers to frequently asked questions (FAQs), a fact sheet, and a video overview of the law to aid employers.



MNDOLI published both the [fact sheet](#) and video overview in [various languages](#). This article highlights some key guidance found in MNDOLI's [newly published FAQs](#) about the [ESST law](#). The FAQs also cover other topics not addressed in this article.

- Only time worked in Minnesota will require accrual of sick and safe time.
- ESST hours accrue only during hours worked. The law does not require ESST hours to accrue when an employee is not working (e.g., while using ESST hours).
- Employees need not specifically ask to use “sick and safe time” to use it.
- Employees may use accrued ESST in “the smallest increment of time tracked by the employer’s payroll system or four hours, whichever is smaller.”
- ESST may be used “at the same time as other protected leave under other state or federal laws.”

Local Sick and Safe Leave Ordinances

Employers must follow the sick and safe leave requirements “most favorable to their employees.” This means “employers must comply with the specific requirements of the state ESST law and the applicable local ESST ordinance that are most favorable to their employees.” As explained in our previous [article](#), there are contradictions and further guidance is needed from MNDOLI. Employers may have to follow “some of the requirements of state ESST law and other requirements of local ESST law.”

Frontloading

While employers may be familiar with the frontloading requirements of the [Minneapolis](#), [St. Paul](#), [Duluth](#), and [Bloomington](#) ordinances, the ESST law added an option that so far only the amended Bloomington and St. Paul ordinances (effective January 1, 2024) allow. The [new law](#) provides an alternative procedure that allows an employer to provide forty-eight hours of ESST in the first year of employment, pay out in cash the value of unused hours at the end of the designated year, and not carry over any unused hours into the next year. The other option is to frontload eighty hours with no pay out at the end of the year.

Increment of Use

The new law states that ESST “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.” The FAQs interpret this to mean “[e]mployees may use ESST in the smallest increment of time tracked by the employer’s payroll system or four hours, *whichever is smaller.*” (Emphasis added.) This is a deviation from the local sick and safe leave ordinances, which allow employees to use sick and safe time in increments consistent with business or payroll practices *provided such increment is not more than four hours.*

Paid Time Off Policies

Paid time off (PTO) plans or other paid leave policies (e.g., sick or vacation time) can satisfy the ESST law, if they meet or exceed the requirements under the law and do not otherwise conflict with the law. A policy or plan “does not have to be called ‘earned sick and safe time’ to meet the requirements of the law,” although employers may want to consider referencing ESST usage in such policy. An employer’s PTO

policy can meet the requirements under the law “even if an employee chooses to use some or all PTO for vacation leave instead of ESST leave.” Nothing in the law prohibits an employer from providing a more generous leave policy.

Please note that employee handbooks still must include notice of an employee’s rights and remedies under the ESST law, even if an employer’s PTO policy meets or exceeds the requirements under the new law.

Out-of-State Employees

Employees do not have to live in Minnesota to be eligible under the new law, but only time worked in Minnesota will apply to sick and safe time accrual. Employees who work in another state are not covered by the ESST law even if an employer is based in Minnesota.

Part-Time vs. Full-Time Employees

If an employer front-loads yearly ESST hours, it may do so for part-time and full-time employees. The employer may also treat part-time and full-time employees differently, provided, however, that all employees receive what they are entitled to under the law and the employer does not apply the law so it discriminates against an employee or group of employees based on a protected characteristic (e.g., race, sex, or national origin). So, for example, an employer may front-load ESST hours for full-time employees but not part-time employees.

Documentation

After more than three consecutive days of ESST are used, an employer may require an employee to provide “reasonable documentation.” This may include the employee’s “supply[ing] the employer with a written statement indicating the employee is using or used ESST for a qualifying purpose” when the employee is “unable to secure the requested documentation.” The employee’s “written statement” can be in the employee’s first language, need not be notarized, and need not be in any particular format. Also, an employer may not require an employee to provide “specific details about the reason for using sick and safe time, including details related to the employee’s or their family member’s medical condition.” Further, “[a]n employer must not require disclosure of details relating to domestic abuse, sexual assault, or stalking or the details of an employee’s or an employee’s family member’s medical condition as related to an employee’s request to use earned sick and safe time under this section.”

Keeping You Informed

We expect MNDOLI to continue issuing additional guidance related to the department’s interpretation of the new law. Ogletree Deakins’ [Minneapolis office](#) will continue to report on the implementation of the

Minnesota state sick leave program and will provide updates on the [Leaves of Absence](#) and [Minnesota](#) blogs as additional information becomes available.

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