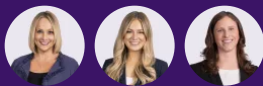


Legal Update Article

Top Changes to Minnesota's Earned Sick and Safe Time Statute

06.03.24



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Minnesota Governor Tim Waltz signed legislation amending the state's Earned Sick and Safe Time (ESST) law, on May 24, 2024, nearly six months after the statute took effect. Although all of the amendments are important, the top changes are ranked below.

#1: Employers must permit employees to use all paid leave provided to them in accordance with the ESST law when the paid leave may otherwise be used for personal injury or illness.

Under the amendments, employers who provide employees paid leave that employees may use for illness or injury beyond the minimum amount the law requires must permit employees to use all the paid leave provided in compliance with the ESST law. Minn. Stat. § 181.9448, subd. 1(a). Put another way, if an employer provides employees paid leave in an amount beyond the statutory minimum, and the employer permits employees to use such paid leave for personal illness or injury, then the employer must treat the entire paid leave balance as ESST and cannot otherwise restrict the amount of the paid leave it considers ESST. This requirement does not apply to any short-term or long-term disability or other salary continuation benefits, nor does it apply to any paid leave accrued prior to Jan. 1, 2024. Employers and labor organizations may agree to waive the documentation requirements of the ESST law for all paid leave beyond the minimum amount the

law requires through a collective bargaining agreement so long as the waiver explicitly references section 181.9447 and clearly and unambiguously waives the application of the applicable subdivision to such employees.

#2: The amendments clarify which employees are covered under the ESST law.

Previously, only employees who had worked in the state of Minnesota for an employer for at least 80 hours in one year were covered by the ESST law. The amendments clarify that an employee is eligible for ESST immediately upon employment, provided the employee is anticipated to work at least 80 hours in one year for the employer in Minnesota. Minn. Stat. § 181.9445, subd. 5. The amendments also carve out more categories of workers not covered by the ESST statute, including certain farm workers and government officials.

#3: ESST must be paid at an employee's "base rate," which is now specifically defined.

The amendments to the ESST law require employers to pay ESST at a rate equivalent to the employee's "base rate." Minn. Stat. § 181.9445, subd. 4 (a). For employees paid an hourly rate, the employee's "base rate" is the hourly rate the employee would have earned had the employee worked instead of taking ESST. This rate does not include overtime pay, shift differentials that are in addition to an hourly rate, holiday pay, gratuities, or commissions. For non-exempt employees who are paid an annual salary, the base rate is the same rate guaranteed to the employee had they not taken ESST. For employees who are paid entirely by commission, piecework, or any basis other than an hourly or salary rate, the base rate must be at least equivalent to the highest applicable minimum wage.

#4: Employers no longer need to list an employee's ESST balance on an employee's earning statement, but employers still need to provide the information in a reasonable format.

Alleviating some administrative hurdles to complying with the ESST law, the amendments removed the requirement that employers list an employee's ESST balance on their earnings statements. Instead, employers must provide to each employee their total number of ESST hours available and used each pay period on a written or electronic record. If the record is electronic, then the employer must allow employees during working hours to use an employer-owned device to access, and print, their ESST balance. Minn. Stat. § 181.9447, subd. 10.

#5: Employers can only require employees to provide reasonable documentation establishing their leave is covered by the ESST statute when the absence lasts for

more than three consecutive scheduled workdays.

An employer can only request reasonable documentation after an employee misses three consecutive scheduled shifts. Minn. Stat. § 181.9447, subd. 3 (a). The amendments also provide that when ESST is used for an absence due to domestic abuse, sexual assault, or stalking of the employee or the employee's family member and the employee cannot obtain documentation in a reasonable time or without added expense, the employer must accept a written statement from the employee indicating that the ESST was used for a qualifying reason as reasonable documentation.

#6: Employers are not required to permit employees to use ESST in increments smaller than 15 minutes.

Previously, employers were required to allow employees to use ESST in the smallest time increment the employer's payroll system could track. Now, employers are required to allow employees to use ESST in the same increment of time for which the employees are paid, but employers do not need to allow employees to use ESST in increments smaller than 15 minutes. Minn. Stat. § 181.447, subd. 5.

#7: Employees can use ESST leave for funeral-related reasons.

According to the amendments, employees are eligible to take ESST to attend a funeral or memorial, in addition to addressing financial or legal matters "that arise after" a family member's death. Minn. Stat. § 181.9447, subd. 1 (iv).

In addition, the amendments expand the remedies available to employees for violations of the ESST law.

Please contact a Jackson Lewis attorney with any questions.

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