

February 21, 2024

Representative Michael Nelson, Chair
House Labor and Industry Finance and Policy
585 State Office Building
St. Paul, MN 55155

Chair Nelson and Labor and Industry Finance and Policy Committee Members,

The Minnesota Inter-County Association (MICA) represents 15 of Minnesota's larger and faster growing counties, including four suburban and eleven Greater Minnesota counties.

Thank you, for the opportunity to offer comments on **HF3882**, a bill making various modifications to the Earned Sick and Safe Time (ESST) law enacted in 2023. Since enactment, MICA member counties have worked to implement the ESST law, recognizing that existing county paid leave typically exceeds the minimum ESST requirements.

We thank Representative Liz Olson for authoring HF3882 and support clarifying various applications of the law, including through administrative rule. HF3882 also seeks to clarify "regular rate of pay." Under the federal Fair Labor Standards Act (FLSA), an employee's "regular rate of pay" has specific meaning. It is a blended rate of pay used for determining appropriate overtime compensation.

Among other implications, "regular rate of pay" exceeds in many instances what an employee, under other circumstances receives for paid leave taken – meaning that ESST hours would be paid at a higher rate than other PTO, vacation, sick leave or personal leave hours taken after the ESST hours are exhausted. "Regular rate of pay" could exceed what the employee would have earned had they not taken ESST paid leave and actually worked their scheduled hours. "Regular rate of pay" is officially calculated at the conclusion of a designated FLSA period, even as employers and payroll systems will need to calculate ESST pay rates in more real time.

We appreciate the challenge and need to set a definition of pay rate that does not create opportunities for employers to minimize the intent of ESST. However, we are concerned that applying the FLSA concept of 'regular rate' will result in ESST-used time being paid at different levels than other paid leave, including some employees that may be paid more and others that may be paid less than the rate they may have been paid for the time they are away from work. We respectfully request the committee to consider using "employee's base hourly rate of pay."

Thank you for your consideration.



Matt Massman, Executive Director
Minnesota Inter-County Association