

Subject Earned Sick and Safe Time

Authors Olson, L. and others

Analyst Marta James

Date March 23, 2022

Overview

Establishes earned sick and safe time requirements for employees who work more than 80 hours a year for an employer.

Article 1: Earned Sick and Safe Time

Section Description – Article 1: Earned Sick and Safe Time

- 1 Comparable position [§ 181.942, subd. 1].**

Makes conforming change; requires that an employee be able to return to their former position after using earned sick and safe time.
- 2 Definitions [§ 181.9445].**

Provides definitions for the article. Defines “employee” as anyone who has worked at least 80 hours in a year for an employer, but not an independent contractor.
- 3 Accrual of earned sick and safe time (ESS) [§ 181.9446].**

Requires employers to allow employees to earn, at a minimum, one hour of paid ESS time for every 30 hours worked, up to 48 hours per year. Allows employees to carry over up to 80 accrued but unused hours of ESS time from year to year. Total accrued but unused ESS cannot exceed 80 hours at any time unless agreed to by the employer. Accrual of ESS begins when a qualified employee begins employment, and may be used after working for the employer 90 calendar days. Salaried employees, who are exempt from the provisions of federal overtime laws, are considered to work 40 hours per week for purposes of ESS accrual.
- 4 Use of earned sick and safe (ESS) time [§ 181.9447].**

Subd. 1. Eligible use. Provides the eligible uses for ESS time. These include: (1) an employee’s mental or physical illness, treatment, or preventative care; (2) care of a sick family member or a family member in need of preventative care or treatment; (3) absence related to domestic abuse, sexual assault, or stalking of an employee or family member; (4) closure of an employee’s workplace due to weather or public emergency or closure of a family member’s school or care

Section Description – Article 1: Earned Sick and Safe Time

facility due to weather or public emergency; and (5) a determination by a health care provider that an employee or family member is at risk of infecting others with a communicable disease. Employees receive their regular hourly rate of pay for ESS time.

Subd. 2. Notice. Allows an employer to require reasonable notice of up to seven days when the need for ESS time is foreseeable, or as soon as practicable when the need is unforeseeable.

Subd. 3. Documentation. Allows an employer to require an employee to provide reasonable documentation justifying use of three or more consecutive days of ESS time. Provides examples of reasonable documentation.

Subd. 4. Replacement worker. Prohibits employers from making employees find replacement workers as a condition of using ESS time.

Subd. 5. Increment of time used. Allows employees to use ESS time in smaller increments of up to four hours, as tracked by the employer's payroll.

Subd. 6. Retaliation prohibited. Prohibits an employer from retaliating against an employee for requesting or taking ESS time or for exercising another right under the ESS provisions.

Subd. 7. Reinstatement to comparable position after leave. Requires an employer to reinstate an employee in the same or comparable position after return from use of ESS time.

Subd. 8. Pay and benefits after leave. Requires an employer to provide the same pay and benefits to an employee returning from ESS leave, including retaining seniority and accrued preleave benefits and any automatic pay adjustments.

Subd. 9. Part-time return from leave. Allows an employee to return to work on a part-time basis during a period of ESS leave with agreement from their employer, without forfeiting their right to reinstatement at the end of the ESS leave.

Subd. 10. Notice and posting by employer. Requires employers to provide notice of employee rights under the ESS provisions at the start of employment or the effective date of this bill, whichever is later. Effective notice includes posting the notice at workplace locations or providing a paper or electronic copy.

Subd. 11. Required statement to employee. Requires an employer, upon employee request, to provide a statement including the amount of ESS time available to the employee and the amount of ESS time used by the employee.

Section Description – Article 1: Earned Sick and Safe Time

Subd. 12. Employer records. Requires an employer to keep records about hours worked and ESS accrual and use by employees, and allows an employee to view their own employee records.

Subd. 13. Confidentiality and nondisclosure. Sets requirements for confidential treatment of employee’s health, medical, and other private records collected in relation to ESS time.

5 Effect on other law or policy [181.9448].

Subd. 1. No effect on more generous sick and safe time policies. Clarifies that nothing prohibits an employer or collective bargaining agreement from providing more generous leave policies than the minimum ESS required by this bill. Permits collective bargaining agreements or paid time off policies that provide the same or better leave. Does not require employers to provide additional ESS if they are already providing the same or better leave. An employer may opt out of these requirements for construction workers by paying prevailing wage or the rate established in a registered apprenticeship agreement.

Subd. 2. Termination; separation; transfer. Provides that employers are not required to pay out any accrued ESS time upon separation from employment. An employee transferred within a single employer retains accrued ESS time and an employee hired back by the same employer within 180 days of termination is entitled to reinstatement of accrued ESS time.

Subd. 3. Employer succession. Allows employees to retain earned but unused ESS time when ownership transfers to a different employer.

6 Repealer.

Repeals section 181.9413 that allows employees to use employer provided sick days to care for a sick relative or to provide or receive assistance for domestic abuse, sexual assault, or stalking.

7 Effective date.

Effective 180 days following final enactment.

Article 2: Earned Sick and Safe Time Enforcement

Section Description – Article 2: Earned Sick and Safe Time Enforcement

- 1 Submission of records; penalty [§ 177.27, subd. 2].**
Increases the maximum penalty for employers who fail to submit required records to the Department of Labor and Industry from \$1,000 to \$10,000 per violation.
Removes penalty for repeated failure.
- 2 Compliance orders [§ 177.27, subd. 4].**
Adds earned sick and safe time provisions to the list of laws that the Department of Labor and Industry may enforce through compliance orders.
- 3 Employer liability [§ 177.27, subd. 7].**
Increases the maximum civil penalty, from \$1,000 to \$10,000 for employers who violate any of the sections over which the Department of Labor and Industry has enforcement authority under section 177.27, subdivision 4.
- 4 Earned sick and safe time enforcement [§ 177.50].**

 - Subd. 1. Definitions.** Provides the same definitions from article 1 apply to this article.
 - Subd. 2. Rulemaking authority.** Allows the commissioner of labor and industry to adopt rules under this section as well as under the sections created by article 1.
 - Subd. 3. Individual remedies.** Allows an employee injured by a violation of the ESS provisions to bring a civil lawsuit in court within three years of the violation.
 - Subd. 4. Grants to community organizations.** Allows the Department of Labor and Industry to make grants to community organizations for outreach and education about the ESS provisions.
 - Subd. 5. Report to legislature.** Requires an annual report to the legislature, from the Department of Labor and Industry, addressing violations of the ESS provisions and trends in violations by employer, industry, or geography.
 - Subd. 6. Contract for labor or services.** Prohibits an employer knowingly contracting with an entity that has violated this section within the last two years and has not cured their noncompliance.

Effective date. Effective 180 days following final enactment.

Article 3: Earned Sick and Safe Time Appropriations

Section Description – Article 3: Earned Sick and Safe Time Appropriations

1 Earned sick and safe time appropriations.

Appropriates money from the general fund to the Department of Labor and Industry, Minnesota Management and Budget, and executive branch entities for the purposes of ESS, including enforcement, duties, and related costs, as well as for grants to community organizations. Also appropriates money to the House of Representatives for timecard system updates and the supreme court for the purposes of this act.



**MN HOUSE
RESEARCH**

Minnesota House Research Department provides nonpartisan legislative, legal, and information services to the Minnesota House of Representatives. This document can be made available in alternative formats.

www.house.mn/hrd | 651-296-6753 | 155 State Office Building | St. Paul, MN 55155