

Subject Earned Sick and Safe Time

Authors Olson, L. and Others

Analyst Marta James

Date February 15, 2023

### 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 allowed to return to their former position after using earned sick and safe time.
- 2 **Posting of law [§ 181.9436].**  
Makes conforming change; directs the agency to add this law to the educational poster of employees' rights.
- 3 **Definitions [§ 181.9445].**  
Provides several definitions used in the article. Defines “employee” as anyone who has worked at least 80 hours in a year for an employer, but not an independent contractor.
- 4 **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 a maximum of 48 hours per year, unless an employer agrees to provide more. Accrual begins when a qualified employee begins employment and may be used as it is accrued. Salaried employees, who are exempt from the provisions of federal overtime laws, are deemed to work 40 hours per week for purposes of ESS accrual. Employers must allow employees to carry over accrued but unused ESS time from year to year – not to exceed a maximum of 80 hours unless the employer chooses to provide a more generous policy. In the alternative, employers may either: (1) provide an employee with a bank of 48 hours of ESS available for immediate use in the following year if the employer pays out the employee for their accrued but unused ESS at their regular hourly rate at the end of

**Section Description – Article 1: Earned Sick and Safe Time**

---

the year; or (2) provide an employee with a bank of 80 hours of ESS available for immediate use in the following year if the employer does not pay out the employee for their accrued but unused ESS at the end of the year. An employee receiving bankable ESS in lieu of a carryover will not accrue additional ESS for that year under this section, unless the employer provides for a more generous policy.

**5 Use of earned sick and safe (ESS) time [§ 181.9447].**

**Subd. 1. Eligible use.** Provides the conditions under which an employee may use ESS time. These include: (1) the 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 the employee or a family member; (4) closure of the employee’s workplace due to weather or public emergency or closure of a family member’s school or care facility due to weather or public emergency; (5) inability to telework due to an employer’s policy or while seeking a medical diagnosis or testing for a communicable disease related to a public emergency – as that term is defined under section 12.03 or 12.29 – at the employer’s request or after the employee’s exposure; and (6) a determination by a health care provider that the employee or a family member is at risk of infecting others with a communicable disease. Employees receive their regular hourly rate of employment 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. Employers requiring notice must provide a written policy to employees on the procedures for providing notice.

**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 depending on the reason for using ESS time.

**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 taking ESS time or for exercising another right under this act. Also prohibits penalizing an employee under an employer’s attendance policy for taking ESS time. Makes it unlawful to report or threaten to report a person or a family member’s immigration status for exercising a right under this act.

**Section Description – Article 1: Earned Sick and Safe Time**

---

**Subd. 7. Pay and benefits after leave.** Requires an employer to continue the employee's health care benefits and maintain coverage for the employee and any dependents while ESS time is being used and to provide the same pay or benefits to an employee returning from ESS time, including seniority, accrued preleave benefits, and any automatic pay adjustments. Employees remain responsible for the employee share of benefit costs during the use of ESS.

**Subd. 8. Part-time return from leave.** Provides that an employee who returns to work part-time during an ESS leave, through an agreement with the employer, receives the same benefits of reinstatement at the end of the ESS time.

**Subd. 9. Notice and posting by employer.** Requires employers to provide notice to employees of ESS requirements and their rights and remedies under this section at the start of employment or the effective date of this act, whichever is later. Must provide the notice in English and in the employee's identified primary language. Notice may be posted at the work location, provided in a paper or electronic copy to employees, or posted online or in an app. Rights and remedies under this section must also be included in any employee handbook.

**Subd. 10. Required statement to employee.** Requires an employer, upon an employee's request, to provide a statement that includes the amount of ESS time earned by the employee and the amount of ESS time used by the employee.

**Subd. 11. Employer records.** Requires an employer to keep accurate records about hours worked and the accrual and use of ESS time, and allows an employee to view that employee's records.

**Subd. 12. Confidentiality and nondisclosure.** Sets requirements for confidential treatment of employee records collected in relation to ESS time.

**6 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 from providing more generous leave policies than the minimum required by this act. Permits collective bargaining agreements or paid time off policies that provide the same or better leave, and do not otherwise conflict with the minimum requirements and standards of this act. Does not preempt or limit any other law or policy that provides for better or greater leave benefits for employees. An employer may opt out of these requirements for construction workers by paying prevailing wage or the rate established in a registered apprenticeship agreement. Allows employers to have ESS donation and advancing time policies.

**Subd. 2. Termination; separation; transfer.** Provides that employers are not required to pay out any accrued ESS time on separation. An employee

**Section Description – Article 1: Earned Sick and Safe Time**

---

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.** Provides for the rights of accrued but unused ESS time for a retained employee or an employee rehired within 30 days of a transfer when ownership of an employer transfers.

**7 Severability.**

Allows any provision of this act judged invalid to be severed and leave the remaining portions operable.

**8 Repealer.**

Repeals the section of law 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.

**9 Effective date.**

Article 1 is effective January 1, 2024.

**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.

Effective January 1, 2024.

**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.

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

---

**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.** Requires any action to recover damages under section 181.944 by an employee alleging injury due to an employer’s violation of this act to be commenced 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.

This section is effective January 1, 2024, except the rulemaking authority under subdivision 2, and authority to begin the grant-making process under subdivision 4, are effective the day following final enactment.

**5 Individual remedies [§ 181.1944].**

Allows an affected employee to bring a civil lawsuit for damages for violations of ESS provisions under existing law.

Effective January 1, 2024.

**Article 3: Earned Sick and Safe Time Appropriations; Conforming Changes**

**Section Description – Article 3: Earned Sick and Safe Time Appropriations; Conforming Changes**

---

**1 Description.**

Makes conforming change to account for a new judge in the Ninth Judicial District.

**Description – Article 3: Earned Sick and Safe Time Appropriations; Conforming**  
**Section Changes**

---

Effective July 1, 2024.

**2 Earned sick and safe time appropriations.**

Appropriates money to the Department of Labor and Industry for enforcement, grant purposes, and other duties, as well as to Minnesota Management and Budget (MMB), specified Executive Branch entities identified by MMB, the House of Representatives, and the Supreme Court for the purposes of the 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](http://www.house.mn/hrd) | 651-296-6753 | 155 State Office Building | St. Paul, MN 55155