

FAQS: EARNED SICK AND SAFE TIME (ESST)

Contents

- [Fast facts](#)
- [Basic information](#)
- [General questions](#)
- [Earning hours: Accrual, front-loading and carryover](#)
- Rates of pay (coming soon)
- Recordkeeping and notice to employees (coming soon)
- Using ESST hours (coming soon)
- Complaints and violations (coming soon)

Fast facts

- Minnesota's earned sick and safe time (ESST) law goes into effect Jan. 1, 2024.
- Employers must provide each employee in Minnesota at least one hour of paid sick and safe time for every 30 hours worked, up to at least 48 hours of accrued ESST a year. An employee is anyone who works at least 80 hours in a year for an employer in Minnesota and is not an independent contractor.
- An employer's existing leave policy, such as paid time off (PTO), may already fully or partially meet Minnesota's earned sick and safe time requirements.
- ESST local ordinances are in effect in the cities of Bloomington, Duluth, Minneapolis and St. Paul, Minnesota, and may differ from the state's ESST requirements. Employers are responsible for following the ESST requirements most favorable to their employees.
- The Minnesota Department of Labor and Industry is responsible for enforcing ESST requirements. In addition, affected employees may bring a civil lawsuit to address ESST violations.

Basic information

What is Minnesota's earned sick and safe time law?

[Effective Jan. 1, 2024](#), Minnesota's earned sick and safe time law requires employers to provide paid leave to employees who work in the state. An employee is anyone who

works at least 80 hours in a year for an employer in Minnesota, but does not include independent contractors. Temporary and part-time employees are covered under the law.

Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, with the ability to accumulate at least 48 hours of ESST each year. An employer's existing leave policy, such as PTO, may already meet Minnesota's ESST requirements.

What can earned sick and safe time be used for?

Employees can use their earned sick and safe time for reasons such as:

1. the employee's mental or physical illness, treatment or preventive care;
2. a family member's mental or physical illness, treatment or preventive care;
3. absence due 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; and
5. when determined by a health authority or health care professional that the employee or a family member is at risk of infecting others with a communicable disease.

For which family members can an employee use ESST?

Employees may use earned sick and safe time for the following family members:

1. their child, including foster child, adult child, legal ward, child for whom the employee is legal guardian or child to whom the employee stands or stood in loco parentis (in place of a parent);
2. their spouse or registered domestic partner;
3. their sibling, stepsibling or foster sibling;
4. their biological, adoptive or foster parent, stepparent or a person who stood in loco parentis (in place of a parent) when the employee was a minor child;
5. their grandchild, foster grandchild or step-grandchild;
6. their grandparent or step-grandparent;
7. a child of a sibling of the employee;
8. a sibling of the parents of the employee;
9. a child-in-law or sibling-in-law;
10. any of the family members (1 through 9 above) of an employee's spouse or registered domestic partner;
11. any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
12. up to one individual annually designated by the employee.

What ESST responsibilities does an employer have if it already provides leave?

A paid time off (PTO) plan or other type of paid leave (including sick or vacation time) can satisfy the ESST law if the plan meets Minnesota's ESST requirements. Nothing prohibits an employer from providing more generous leave policies than the minimum required by the ESST law.

The name of the employer's paid time off or other paid leave policy does not matter. It does not have to be called "earned sick and safe time" to meet the requirements of the law.

Is the state ESST law the same as the sick time ordinances in several Minnesota cities?

ESST local ordinances are in effect in the cities of Bloomington, Duluth, Minneapolis and St. Paul, Minnesota, and may vary from the requirements under state law.

When Minnesota's statewide earned sick and safe time law goes into effect Jan. 1, 2024, employers are responsible for following the ESST requirements most favorable to their employees. In other words, 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. This may mean following some of the requirements of state ESST law and other requirements of the local ESST law.

General questions

Who is *not* covered by Minnesota's ESST law?

Federal employees and independent contractors are not covered under Minnesota's ESST law. Certain individuals employed by an air carrier as a flight deck or cabin crew member are also not covered. The ESST law does not apply to building and construction industry employees who are represented by a building and construction trades labor organization if a valid waiver of these requirements is provided in a collective bargaining agreement.

Does the employee have to live in Minnesota to be covered by ESST?

Employees do not have to live in Minnesota to be eligible for ESST accrual but must work at least 80 hours in Minnesota in a year to be eligible; time worked in Minnesota will apply to ESST accrual. If an employer is based in Minnesota but has employees who work in another state, those out-of-state employees are not covered by Minnesota's ESST law.

If an employer contracts with a staffing agency for temporary employees, which entity is responsible under Minnesota's ESST law to meet the sick and safe time obligations for the temporary employees?

Under Minnesota's ESST law, unless there is a contract that states otherwise, the staffing agency is responsible for the ESST obligations.

Earning hours: Accrual, front loading and carryover

When do employees begin to accrue ESST?

Employees begin accruing ESST on their first day of employment.

What is accrual of hours?

Accrual of hours is when each ESST hour is added to a saved total the employee may use. Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, up to at least 48 hours a year.

Sample scenarios

- Manuel works 30 hours a week at Classic Automotive and has worked there for seven months (28 weeks). Manuel has accrued 28 hours of ESST: $30 \text{ hours worked} \times 28 \text{ weeks} = 840 \text{ hours worked}$. $840 \text{ divided by } 30 = 28 \text{ hours of ESST}$.
- Sara works 40 hours a week at Mid-Minnesota Warehousing and has worked there for three weeks. Sara has accrued four hours of ESST: $40 \text{ hours worked} \times 3 \text{ weeks} = 120 \text{ hours worked}$. $120 \text{ divided by } 30 = 4 \text{ hours of ESST}$.

Can an employer put a cap on how many ESST hours an employee can accrue?

Yes, employers may set a cap or limit on each employee's ESST accrual. Employers must allow each employee to accrue up to at least 48 hours a year, carried over from year to year, until an 80-hour maximum accrual is reached. These limits of 48 hours each year and a maximum accrual of 80 hours for each employee may be higher if an employer agrees, but not lower. See options 2 and 3 below for front loading options that do not involve required carryover.

Sample scenario

- Ali Consultants limits its employees' accrual of ESST hours to the minimum standard of 80 hours. Michelle accrued 30 ESST hours by the end of the first year of her employment. These 30 hours carried over into the second year, during which she accrued an additional 48 hours. She did not use any of these

accrued hours. In the third year, Michelle accrues an additional two ESST hours before stopping at a limit of 80 hours (30 + 48 + 2). Because the employer capped the number of ESST hours at 80, she must use some accrued hours in her “bank” of 80 hours before accruing more ESST hours.

Do unused ESST hours carry over from year to year?

Yes, employers must carry over each employee’s accrued and unused ESST hours to the following year unless the employer chooses to front load ESST hours in accordance with the options provided in the ESST law listed below. Total accruals including carryover amounts may be capped at 80 hours of ESST.

Sample scenario without front loading

- Lee accrued 30 ESST hours by the end of the first year of employment. However, Lee did not use any of these ESST hours. Lee’s employer must carry over those 30 hours into the following year. Lee may then accrue additional hours up to at least 48 in the second year.

How does a salaried and exempt employee accrue sick and safe time hours?

Employees who are exempt from overtime because they are professional, administrative, or executive employees are presumed to work 40 hours a week for the purposes of ESST accrual. If there is clear evidence an exempt employee’s regular work week is less than 40 hours, ESST may accrue based on that employee’s actual regular work week.

Do hours accrue when the employee is not working (on vacation or out sick)?

The law does not require ESST hours to accrue when an employee is not working.

How frequently are ESST hours calculated?

Employers may calculate and record earned sick and safe time hours at the same frequency as the employer’s other typical payroll practices (i.e., by pay period, whether that’s weekly, biweekly, monthly, or twice monthly). Amounts accrued and available for use in addition to amounts used each pay period must be listed on the employee’s earnings statement (also known as a paystub).

What is a “year” for purposes of the ESST law?

A “year” means any consecutive 12-month period of time as determined by an employer and clearly communicated to employees. Most employers will find it helpful to use one of the following: calendar year (Jan. 1 through Dec. 31); tax year; fiscal year; or year

based on the employee's anniversary date of employment. While the employer may determine the accrual year, it is important to note that all employees must either 1) start accruing hours on Jan. 1, 2024, or 2) have at least 48 hours front loaded on Jan. 1, 2024.

How does “front loading” versus accrual of hours affect carryover into the next year under Minnesota’s ESST law?

“Front loading” of ESST hours is an alternative method for providing ESST to employees. This option allows employers to record accrual of ESST once a year and avoid carry over of hours from year to year. Some employers may want to use this method to reduce the calculations and recordkeeping required for accrual by pay period (weekly, biweekly, twice monthly or monthly).

Employers may choose whether hours will accrue each pay period or be “front loaded” at the start of each year. Option 1 allows for carryover, but employers can avoid carryover requirements by using either Option 2 or 3.

Option 1. Accrual and carryover:

- employees begin accruing ESST from their first day of employment;
- ESST accrues at a rate of at least one hour for every 30 hours worked;
- employees are permitted to accrue a minimum of up to 48 hours of ESST in a year (more if the employer agrees to a higher amount); and
- employees can carry over unused ESST into the next year. However, at no time can an employee's accrued ESST exceed 80 hours (unless the employer agrees to a higher amount).

Option 2. Front loading with pay out and no carryover:

- A minimum of 48 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- unused ESST hours are paid out at the end of the accrual year at the employee's hourly rate.

Option 3. Front loading with no pay out and no carryover:

- A minimum of 80 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- the ESST hours the employee did not use are not paid out at the end of the accrual year.

Sample scenario

- Ana is a business owner. She employs Omar and front loads Omar's sick and safe time hours once a year. At the beginning of Omar's first year of employment,

Ana front loads 48 hours into Omar's bank. He has eight hours of remaining sick and safe time at the end of the first year, which Ana pays out. At the beginning of Omar's second year and every year thereafter, Ana front loads 80 hours into Omar's bank; once using option 3 (see above), Ana is not required to pay out unused ESST hours at the end of the year.

May an employer front load yearly ESST hours for part-time employees?

Yes, an employer may front load yearly ESST hours for part-time or full-time employees.

May an employer treat part-time and full-time employees differently? For example, can the employer front load ESST hours for some employees but not others?

Yes, an employer may treat part-time and full-time employees differently for purposes of ESST so long as the employer provides all employees at least what they are entitled to under Minnesota's ESST law and as long as the law is applied in a way that does not discriminate against an employee or group of employees based on a protected class, such as race, sex or national origin.

Does ESST accrue the same way for building and construction industry employees?

The requirements for ESST can be waived through a collective bargaining agreement with a bona fide building and construction trades labor organization. This waiver needs to reference the ESST law specifically.

Must unused ESST hours be paid out when an employee leaves their job?

Employers are not required to pay out any accrued and unused ESST if an employee leaves their job, either voluntarily or involuntarily. However, employers may choose to do so. An employee who transfers positions or work units within a single employer retains their accrued ESST.

Are ESST hours restored if an employee returns to work for a former employer?

An employee who returns to work for the same employer within 180 days of separation is entitled to the ESST hours accrued before leaving the employer.

What happens to ESST hours if the workplace changes owners?

If a workplace changes ownership, retained employees keep their accrued and unused ESST. Employees who are terminated by the original owner as part of the change in

ownership and are rehired by the new owner within 30 days of ownership change are also entitled to their accrued and unused ESST.

Do sick and safe time hours accrue on overtime hours worked?

ESST hours accrue on all hours worked, including overtime hours, unless the employee is exempt from earning overtime compensation under exemptions for professional, administrative and executive employees.