



Earned Sick and Safe Time Memo – HF19

BACKGROUND: EARNED SICK AND SAFE TIME BASICS

What is Earned Sick and Safe Time? Earned Sick and Safe Time (ESST) is a new law that was passed in May 2023 which requires employers to provide paid leave to employees who work in Minnesota. This is a benefit that all employees are provided for specific short-term leave purposes.

When does Earned Sick and Safe Time go into effect? January 01, 2024.

Who is considered an employee? An employee means any person who is employed by an employer, including temporary and part-time employees, who performs work for at least 80 hours in a year.

How much Earned Sick and Safe Time can an employee earn? An employee accrues 1 hour earned sick and safe time for every 30 hours worked up to a maximum of 48 hours of earned sick and safe time in a year. Employers may agree to offer a higher amount should they choose.

When does an employee start earning Earned Sick and Safe Time? The employee begins accruing ESST on the first day of employment.

What is the pay rate for an employee using Earned Sick and Safe Time? The hourly rate in which the shift they were scheduled. Tips are not included.

What can an employee take Earned Sick and Safe Time for? Employees can use their ESST for multiple reasons. The reasons include:

- The employee's mental or physical illness, treatment or preventative care
- A family member's mental or physical illness or preventative care.
- Absence due to domestic abuse, sexual assault, or stalking of the employee or a family member.
- Closure of the employee's workplace due to weather or a public emergency or closure of a family member's school or care facility due to weather or public emergency.
- When determined by a health authority or health care professional that the employee or family member is at risk of infecting others with a communicable disease.

Who is considered family for the purposes of an employee taking Earned Sick and Safe Time?

Employees may use ESST 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 listed in 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.



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DIG DEEPER: WHO IS AN EMPLOYEE?

Who is considered an employee? An employee means any person who is employed by an employer, including temporary and part-time employees, who performs work for at least 80 hours in a year for that employer in Minnesota. Employees who are exempt from overtime requirements under USC title 29, section 213(a)(1) are deemed to work 40 hours in each workweek for accrual purposes.

Who is not considered an employee? Independent contractors and federal employees.

What if my employee lives outside of Minnesota? Time worked in Minnesota applies to the 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 ESST.

What if I employ temporary employees through a staffing agency, who is responsible? Unless there is a contract that states otherwise, the staffing agency is responsible for ESST obligations.

DIG DEEPER: ACCRUALS, CARRY OVER AND PTO PLANS

Does an employee accrue Earned Sick and Safe Time on overtime hours worked? Yes, ESST hours accrue on all hours worked, unless the employee is exempt from earning overtime compensation under exemptions for professional, administrative and executive employees.

Is there a cap on the Earned Sick and Safe Time an employee can accrue? Yes. The total amount of accrued to unused earned sick and safe time must not exceed 80 hours at any time, unless the employer agrees to a higher amount.

Does Earned Sick and Safe Time roll over/carry over to the next 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.

What if my business offers an existing leave policy, such as paid time off (PTO), do I still need to participate in Earned Sick and Safe Time? A PTO or other paid leave plan (sick or vacation time) can satisfy the ESST if the plan meets Minnesota's ESST requirements. The policy does not have to be called ESST to meet requirements. Nothing prohibits an employer from providing more generous leave policies than the minimum required by ESST.

Does Earned Sick and Safe Time accrued hours need to be paid out when an employee leaves their job? No, employers are not required to pay out any accrued and unused ESST if the employee leaves their job, either voluntarily or involuntarily. However, employers may choose to pay out ESST.

DIG DEEPER: MY EMPLOYEE IS OUT ON ESST

When can an employee start using accrued Earned Sick and Safe Time? Employees may use ESST as soon as it is accrued.

Does an employee have to use a certain amount of Earned Sick and Safe Time for each absence? Employees may use ESST in the smallest increment of time tracked by the employer's payroll system or 4 hours, whichever is smaller.



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What is the pay rate for an employee using Earned Sick and Safe Time? The hourly rate in which the shift they were scheduled. For example, if you have an employee that works multiple positions, they are entitled to the pay for the shift they were scheduled when requesting ESST.

Are tips included in the pay rate for an employee using Earned Sick and Safe Time? No.

Can the employer require an employee to provide notice to use Earned Sick and Safe Time? An employer may require notice of up to 7 days in advance when the need to use ESST is foreseeable. If the need is unforeseeable, an employer may require notice as soon as practicable. If an employer requires notice, the employer must have a written policy regarding notice procedures and must provide a written copy of the policy to employees; if the policy is not provided to employees, then an employer cannot deny use of ESST to an employee on the grounds that the employee did not follow the notice policy.

Can the employer require documentation for an employee to use Earned Sick and Safe Time? Generally, no. If the employee is out 3 consecutive days, then the employer can request documentation. If the employee is unable to secure the requested documentation, in most cases the employee may supply the employer with a written statement indicating the employee is using or used ESST for a qualifying purpose. The written statement may be written in the employee's first language and does not need to be notarized or in any particular format.

If an employee takes Earned Sick and Safe Time, does the employee have to find a replacement worker/an employee to cover their shift? No. An employer may not require, as a condition of an employee using earned sick and safe time, that the employee seek or find a replacement worker to cover the hours the employee uses as earned sick and safe time.

DIG DEEPER: EMPLOYER REQUIREMENTS

Are there employer notification requirements for employees? Yes – there are several.

- **Earnings Statement ESST Accruals:** Employers must include the total number of ESST hours available for use, as well as the total number of ESST used, on earnings statements provided to employees at the end of each pay period.
- **Notice By January 01:** Employers must supply employees with a notice in English and the primary language of the employee, as identified by the employee, containing the information required by January 01, 2024, or at the start of their employment.
 - Minnesota Department of Labor has created a uniform employee notice that employers can use and will be available in the five most common languages spoken in Minnesota.
- **Include ESST Notice in Employee Handbook:** If the employer has an employee handbook, the ESST notice must be included.

As an employer, do I have record keeping requirements? Yes, in addition to the earnings statement requirement above, employers must keep records of hours worked, as well as other information. Those records must be retained for 3 years.

RESOURCES

- Legislation: [Official Law from 2023](#) | Bill Text: [HF19](#) | [SF 34](#)
- Guidance from Department of Labor: <https://www.dli.mn.gov/sick-leave>

Questions? Reach out to Jill Sims, Director of Government Relations – jill@hospitalitymn.com