

Subject Earned sick and safe (ESS) time

Authors Olson and others

Analyst Marta James

Date March 1, 2021

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 at least 48 hours per year. Employees must be able to carry over at least 80 accrued hours of ESS time from year to year. Accrual begins when a qualified employee begins employment, but an employee may not begin using ESS time until they have worked for the employer for a period of 90 calendar days. 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.
- 4 **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 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) a

Section Description – Article 1: Earned Sick and Safe Time

determination by a health care provider that the employee or 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.

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 for 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 section.

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 or benefits to an employee returning from use of ESS time, including seniority and accrued preleave benefits and any automatic pay adjustments.

Subd. 9. Part-time return from leave. Provides that an employee returning to work during the ESS leave, on a part-time basis by agreement with the employer, gets the same benefits of reinstatement at the end of the ESS time.

Subd. 10. Notice and posting by employer. Requires employers to post notice of employee rights under this section and provide similar notice to employees at the later of commencement of employment or the effective date of this bill.

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.

Subd. 12. Employer records. Requires an employer to keep records about hours worked and ESS accrual and use, and allows an employee to view that employee's records.

Section Description – Article 1: Earned Sick and Safe Time

Subd. 13. Confidentiality and nondisclosure. Sets requirements for confidential treatment of employee 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 from providing more generous leave policies than the minimum required by this bill. Permits collective bargaining agreements or paid time off policies that provide 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 on separation. 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. 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.

6 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.

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.

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

- 2 **Compliance orders [§ 177.27, subd. 4].**
Adds earned sick and safe time 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 affected by an employer violation of the ESS provisions to bring a civil law suit 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.

Article 3: Earned Sick and Safe Time Appropriations

Article 3 provides general fund appropriations.

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

- 1 **Earned sick and safe time appropriations.**
Provides appropriations to the Department of Labor and Industry and Minnesota Management and Budget.



**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