The Work Week

News from the
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Minnesota DOLI Issues New Rules Clarifying Earned Sick and Safe Time (ESST) Law

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For two and a half years, Minnesota employers have been navigating ESST, including some of the gray areas that have arisen since it became effective. The recently adopted administrative rules issued by the Minnesota Department of Labor and Industry will hopefully provide clarity to those gray areas. The rules don't rewrite the ESST statute; rather, they answer the practical, day-to-day questions employers have faced since ESST took effect. Below is a summary of the key clarifications.

Eligibility: The "80-Hour" Determination

The statute states that employees are ESST-eligible if they are *anticipated* to work at least 80 hours in a year in Minnesota. The rules clarify that employers must make this determination in good faith, based on the employee's anticipated schedule and work location, and that the determination cannot be knowingly false or made in reckless disregard of the truth. Importantly, even if an employer initially determines an employee won't hit 80 hours, the employee becomes eligible if they actually work 80 hours. It is important to monitor and track those employees who are not anticipated to work 80 hours, particularly if they are picking up shifts, working overtime, or their schedule changes.

Hours Worked and Accrual Mechanics

- *Hours worked:* "Hours worked" for ESST accrual purposes follows the same standards used elsewhere in Minnesota wage and hour law (Minn. R. 5200.0120 and 5200.0121).

- *Accrual year:* The default accrual year is the calendar year unless the employer selects and clearly communicates a different 12-month period in the required ESST notice at the start of employment. If an employer wishes to change its accrual year, it must give written notice (as part of the notice of changes to employment terms required under Minn. Stat. § 181.032(f)) before the change takes effect, and the change cannot negatively affect an employee's ability to accrue ESST.

- *Exempt employees:* Employers must credit 40 hours/week for accrual purposes (unless the normal workweek is shorter), but when an exempt employee uses ESST for a full missed day, employers may only deduct the number of hours attributed to that day — not more.

- *Indeterminate shifts (shifts without a fixed end time, common in restaurants/bars):* When an employee misses all or part of such a shift, the employer must estimate hours to deduct using one of three methods — (1) hours worked by the replacement, (2) hours worked during the employee's last similar shift, or (3) hours worked by a similarly situated employee.

- *Crediting timing:* ESST must be credited no later than the regular payday for the pay period in which it was earned, and becomes usable once credited. Employers are not required to credit fractional hours each pay period, but any uncredited fraction must carry forward until it accumulates to a full hour.

- *Rehire within 180 days:* Unused, non-disbursed ESST must be reinstated if an employee is rehired within 180 days, though the reinstatement obligation can be capped at 80 hours absent a more generous policy or other legal requirement.

- *Switching Methods:* Employers may switch between accrual and frontloading (in either direction) by providing written notice as part of the required notice of employment-term changes. Any such switch takes effect only at the start of the next accrual year — not mid-year — unless the employee agrees otherwise. If notice is not given, the employer must maintain the existing accrual method until the beginning of the next accrual period. Employers who frontload the statutory minimum (or more) are not required to also provide accrual-based ESST on top of it.

- *Voluntary Use:* Using ESST is the employee's choice. An employer cannot require an employee to use ESST for a qualifying absence — but if the employee declines to use it, that absence loses ESST's job-protection.

- *Incentive Programs:* Attendance bonuses or similar incentives tied to a specific goal (e.g., perfect attendance, sales targets) may still be denied if an employee misses the goal because they used ESST — but only if the same incentive would also be denied to employees who missed the goal using other forms of leave. Selectively penalizing ESST use while excusing other leave types is not permitted.

Documentation and Misuse

Employers may require reasonable documentation when ESST is used for more than two consecutive scheduled workdays, provided the requirement is clearly communicated in advance and the employee is given a reasonable time to comply.

Employers may also request documentation for suspected misuse, even for shorter absences, where there is a pattern or clear instance of concern — for example, repeated ESST use adjacent to a scheduled day off, repeated use of increments under 30 minutes at the start/end of a shift, or use on a day off previously denied for other leave.

Misuse of ESST (using it for a non-qualifying reason) is not protected under the law and may be grounds for discipline, but employers cannot deny future legitimate ESST use based on past suspicion or misuse.

Interplay with Other Leaves and Local Ordinances

- *More Generous PTO Policies:* If an employer's PTO or other paid-leave policy exceeds ESST's minimums, the excess time is still subject to ESST's protections whenever it's used for an ESST-qualifying reason (illness, safe time purposes, caring for a family member, etc.), even though the excess itself isn't required by the ESST statute.

- *Local Ordinances:* The new rules do not preempt local ESST ordinances in Minneapolis and St. Paul. Employers must comply with whichever standard — state or local — is more favorable to the employee.

- *Minnesota Paid Leave:* The rules reiterate that Minnesota Paid Leave is treated as a separate "salary continuation benefit" and is not subject to ESST's minimum standards.

Recommended Next Steps

1. Review and, if needed, update your written ESST policy and employee notices to reflect the accrual year, accrual/frontloading method, and documentation procedures you use.

2. Confirm your payroll processes credit ESST no later than the applicable payday each pay period.

3. Train managers and HR staff on the good-faith eligibility determination, indeterminate-shift deduction rules, and the limits on requesting documentation.

4. Audit any attendance-incentive programs for disparate treatment of ESST use versus other leave types.

5. If you operate in Minneapolis or St. Paul, confirm you are applying the more generous of the state or local requirement.

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