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NEW LEGISLATIVE CHANGES TO EARNED SICK AND SAFE TIME IMPACTING THE CONSTRUCTION INDUSTRY

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INTRODUCTION

Just as employers are getting acclimated to Earned Sick and Safe Time (“ESST”), the Minnesota legislature added some new twists during the recent legislative session. While some of the changes may be a relief to employers, others are not as friendly. Below is a summary of the most significant changes to ESST.

Remedies:

The most significant addition is the liability risk to employers for non-compliance. Employers who violate the ESST law are subject to a liquidated damages penalty in an amount equal to the ESST that should have been provided under the law, effectively imposing a double-damages penalty. An employer is also liable for liquidated damages if it does not maintain the necessary records to determine the amount of ESST accrued and owed. The employer will be liable to employees for the equivalent of 48 hours of ESST plus an equal amount of liquidated damages.

Qualifying Purpose:

Bereavement leave is now a qualifying use of ESST. An employee may use ESST “to make arrangements for or attend funeral services or a memorial, or address financial or legal matters that arise after the death of a family member.”

Qualified Individual:

The definition of “employee” previously only excluded independent contractors and airplane flight deck or cabin crew members. The new definition added three more exclusions: volunteer firefighters, elected officials, and farm employees performing less than 28 days of work each year. Additionally, flight deck and cabin crew members are no longer excluded from the definition of “employee.”

Finally, for temporary and part-time employees, if an employer *anticipates* the employee will perform at least 80 hours of work per year in Minnesota, the employee is eligible for ESST.

Earning Statements:

Paystubs no longer need to include both accrued and used ESST totals. However, if an employer removes the information from paystubs, the employer must provide the information to employees in an alternative means, including access to the information through separate electronic means. Employers are also required to preserve all electronic records of ESST information *for three years*.

Rate of Pay:

To clarify the rate at which ESST must be paid, the amendment removed references to “hourly” and replaced them with “base rate” which is a newly defined term. The definition of “base rate” clarifies the rate at which ESST must be paid for salaried individuals, individuals who are paid hourly but whose hourly rate varies, and commissioned individuals. Additionally, for employers who use the 48-hour accrual method, unused ESST must be paid at the employee’s base rate of pay.

Increment of Use:

ESST must be used in the same increment of time at which an employee is paid. However, the new language permits an employer to require ESST be used in 15-minute increments, even if the employer pays in smaller increments. The cap on the maximum increment an employer can require an employee to use remains at 4 hours. In other words, an employer cannot require an employee to use more than 4 hours of ESST if the employee does not need more than four (4) hours. For example, if an employee has an appointment that will last less than an hour, the employer must pay in increments of four hours before it can require the employee to use four (4) hours of ESST for that appointment.

Documentation:

The three-day waiting period for requesting documentation has been revised to three *consecutive scheduled* days. In other words, if an employee working Monday through Friday, uses ESST on a Friday, they must also use ESST on Monday and Tuesday before an employer can request documentation to support the requested leave.

Additionally, an employee using ESST related to domestic violence matters may submit a written statement if they are unable to get other documentation within a reasonable time or without added expense.

LEGISLATIVE CHANGES BEYOND ESST

In addition to the changes to ESST, the Minnesota legislature passed other employment-related provisions that impact the construction industry, such as worker classification; pay transparency; standard minimum wages; child labor; oral fluid testing for drugs, alcohol and saliva; captive audience signage; OSHA; continuation of insurance benefits during pregnancy; access to personnel records; surgical smoke evacuation systems; and non-solicitation provisions. More information regarding these changes is available on [Bassford Remele’s website](#). Below is a chart of the laws and their effective dates.

2024 Employment-Related Legislation Summary	
Effective Dates	
Effective May 25, 2024	
ESST Amendments (Minn. Stat. § 177.50 and Chapter 181.)	Minnesota Paid Leave Law Amendments (Minn. Stat. § 268B, <i>et seq.</i>) *The amendments do not change the date that employers are required to provide paid leave which remains January 1, 2026.
Effective July 1, 2024	
Non-Solicitation in Service Contracts (Minn. Stat. § 181.9881)	Worker Classification (Minn. Stat. §§ 181.722 and 181.723) *The new construction-specific classification criteria will be effective March 1, 2025.
Effective August 1, 2024	
Credit Card Tips (Minn. Stat. § 177.24)	Oral Fluid Testing (under DATWA) (Minn. Stat. §§ 181.950 and 181.953)
Pregnancy Leave and Pregnancy Accommodation Amendments (Minn. Stat. §§ 181.939, 181.941 and 181.943)	OSHA Amendments (Minn. Stat. §§ 182.6526, 182.664, 182.665, and 182.667)
Personnel Records (Minn. Stat. § 181.960, <i>et seq.</i>)	Child Labor Law Amendments (Minn. Stat. §§ 181A.08 and 181A.12)
Effective October 1, 2024	
Captive Audience Meeting Mandatory Signage (Minn. Stat. § 181.531)	
Effective January 1, 2025	
Pay Transparency - Salary Range in Job Posting (Minn. Stat. § 181.173)	Minimum Wage Regardless of Employer Size (Minn. Stat. § 177.24)
Surgical Smoke Evacuation Systems (Minn. Stat. § 182.678)	

CONCLUSION

The 2024 Minnesota legislative session served up new laws and amendments to others. Bassford Remele is prepared to discuss how the new laws and amendments may impact your business. Should you have any questions regarding any of the legislation, please reach out to the [Employment Law](#) practice group at Bassford Remele!

About the Author



[Beth LaCanne](#) is an attorney at Bassford Remele, P.A. She represents clients in employment matters ranging from providing advice on employee handbooks to defending employers in administrative and legal proceedings. Beth is licensed in Minnesota and Wisconsin. blacanne@bassford.com, 612-376-1610.

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