

AMENDMENTS TO MINNESOTA'S EARNED SICK AND SAFE TIME LAW

BY BETH LACANNE AND DANIELLE FITZSIMMONS

Keeping up with legislative changes can be like trying to herd cats—just when you think you've got it all under control, another legislative session releases another litter of changes. Staying on top of these changes is necessary to avoid a compliance cat-astrophe! This article will cover the recent changes to the Minnesota Earned Sick and Safe Time (ESST) law, a law so fresh, it practically still has that “new law smell.” With the ink on the original law barely dried and employers still getting acclimated, the Minnesota legislature added some new twists to the law, including the addition of a hefty penalty for violations.

NONCOMPLIANCE WILL BE COSTLY

The most significant addition to the ESST law 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 em-

ployees for the equivalent of 48 hours of ESST plus an equal amount of liquidated damages.

QUALIFYING PURPOSE EXPANDED TO INCLUDE BEREAVEMENT

Bereavement leave now qualifies as a permitted 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 MODIFICATIONS

The initial definition of “employee” was broad, excluding only independent contractors and airline 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.”

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. Unless you are confident that your em-

ployee will work less than 80 hours per year in Minnesota, it is safest to err on the side of caution and provide them with ESST.

ESST TRACKING VIA PAYSTUBS OR ELECTRONIC MEANS

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 CLARIFICATION

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 its employees to use ESST 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 four hours. In other words, an employer cannot require an employee to use more than four hours of ESST if the employee does not need more than four 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 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 the following Monday and Tuesday before an employer can request documentation to support the requested leave, unless the employee is typically scheduled on Saturday and Sunday.

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 law firms, such as an expanded definition of “disability” and more significant damages and remedies under the Minnesota Human Rights Act; 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; and non-solicitation provisions. More information regarding these changes is available on our website.

CONCLUSION

Kittens can be soft and cuddly, but the folks from the government will not be if you and your law firm violate the ESST law or other employment laws. The ramifications of non-compliance will be anything but a-meows-ing. Because some of the amendments are already effective, you and your law firm should not pro-cat-stinate reviewing your policies and procedures for compliance or reaching out to our cat-tamers...err...employment law attorneys to help.

2024 Employment-Related Legislation Summary Effective Dates

- **Effective May 25, 2024**
ESST Amendments (Minn. Stat. §§ 177.50 and 181.9445, et seq.)
Minnesota Paid Leave Law Amendments (Minn. Stat. Ch. 268B)
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**
Minnesota Human Rights Act Pregnancy Leave and Pregnancy Accommodation Amendments (Minn. Stat. §§ 181.939, 181.941 and 181.943)
Personnel Records (Minn. Stat. § 181.960, et seq.)
Credit Card Tips (Minn. Stat. § 177.24)
Oral Fluid Testing (under DATWA) (Minn. Stat. §§ 181.950 and 181.953)
OSHA Amendments (Minn. Stat. Ch. 182)
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)
Surgical Smoke Evacuation Systems (Minn. Stat. § 182.678)
Minimum Wage Regardless of Employer Size (Minn. Stat. § 177.24)

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