

FAQS: EARNED SICK AND SAFE TIME (ESST)

Answers to FAQs are informational only and only apply to Minnesota's ESST law. These answers are not a source of law or legal advice, and do not contemplate the applicability or effect of any other law or regulation. Furthermore, these answers do not contemplate the impact of provisions contained in a collective bargaining agreement. To review Minnesota's ESST requirements, see [Minnesota Statutes 181.032](#) and [181.9445-181.9448](#).

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Fast facts

- Minnesota's earned sick and safe time (ESST) law has been in effect since Jan. 1, 2024.
- Employers must provide each employee in Minnesota at least one hour of paid sick and safe time for every 30 hours worked, up to at least 48 hours of accrued ESST a year. An employee is anyone who an employer anticipates will work at least 80 hours in a year for an employer in Minnesota and is not an independent contractor.
- An employer's existing leave policy, such as paid time off (PTO), may already fully or partially meet Minnesota's earned sick and safe time requirements.
- ESST local ordinances are in effect in the cities of Bloomington, Minneapolis and St. Paul and may differ from the state's ESST requirements. Employers are responsible for following the ESST requirements most favorable to their employees.
- The Minnesota Department of Labor and Industry is responsible for enforcing ESST requirements. In addition, affected employees may bring a civil lawsuit to address ESST violations.

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Basic information

When did Minnesota's ESST law go into effect?

It went into effect Jan. 1, 2024.

What is Minnesota's ESST law?

Minnesota's earned sick and safe time law requires employers to provide paid leave to employees who work in the state. An employee is anyone who an employer anticipates works at least 80 hours in a year for an employer in Minnesota but does not include independent contractors. Part-time, seasonal and temporary employees are covered under the law.

Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, with the ability to accumulate at least 48 hours of ESST each year. An employer's existing leave policy, such as PTO, may already meet Minnesota's ESST requirements.

What can ESST be used for?

Employees can use their earned sick and safe time for reasons such as:

1. the employee's mental or physical illness, treatment or preventive care; **Payroll code = Sick: Employee**
2. a family member's mental or physical illness, treatment or preventive care; **Payroll code = Sick: Family**
3. absence due to domestic abuse, sexual assault or stalking of the employee or a family member; **Payroll code = Sick ESST Reason**
4. to make funeral arrangements, attend a funeral service or memorial or address financial or legal matters that arise after the death of a family member; **Payroll code= Sick Bereavement**
5. 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 when determined by a health authority or health care professional that the employee or a family member is at risk of infecting others with a communicable disease. **Payroll code = Sick ESST Reason**
- 6.

Which family members can an employee use ESST for? **Payroll code= Sick Family**

Employees may use earned sick and safe time 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 (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.

What ESST responsibilities does an employer have if they provide leave?

A paid time off (PTO) plan or other type of paid leave (including sick or vacation time) can satisfy the ESST law if the plan meets Minnesota's ESST requirements. Nothing prohibits an employer from providing more generous leave policies than the minimum required by the ESST law. **Our contracted sick leave plans for employees scheduled over 4.5 hours per day will be used as they provide more generous accruals for staff. See individual contract language for specific accrual rates. For those scheduled under 4.5 hours or on call we will use ESST accrual which is 1 hour for every 30 hours worked.**

The name of the employer's paid time off or other paid leave policy does not matter. It does not have to be called "earned sick and safe time" to meet the requirements of the law.

Is the state ESST law the same as the sick time ordinances in several Minnesota cities?

ESST local ordinances are in effect in the cities of Bloomington, Minneapolis and St. Paul and may vary from the requirements under state law. Employers are responsible for following the ESST requirements most favorable to their employees. In other words, employers must comply with the specific requirements of the state ESST law and the applicable local ESST ordinance that are most favorable to their employees. This may mean following some of the requirements of state ESST law and other requirements of the local ESST law.

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Coverage

Who is not covered by Minnesota's ESST law?

Those who are not covered by Minnesota's ESST law include:

- Federal employees.
- Independent contractors.
- Volunteer and paid-on-call firefighters.
- Volunteer ambulance attendants and ambulance service personnel who serve in a paid on-call position.
- Elected officials or a person appointed to fill a vacancy to elected office. **Board Members**
- An individual employed by a farmer, family farm or family farm corporation to do physical labor or manage the farm, if they are hired to work for 28 days or less each year.
- Building and construction industry employees who are represented by a building and construction trades labor organization if a valid waiver of these requirements is provided in a collective bargaining agreement.
- Certain family caregivers who have waived their rights to ESST.

Does the employee have to live in Minnesota to be covered by ESST?

Employees do not have to live in Minnesota to be eligible for ESST. Hours worked in Minnesota will apply to 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 Minnesota's ESST law.

Do local governments need to provide ESST to volunteer or paid-on-call emergency responders?

Volunteer firefighters, paid-on-call firefighters, volunteer ambulance attendants, and ambulance service personnel in paid on-call positions are not required to be provided ESST.

Do governmental units need to provide ESST to elected officials?

Elected officials and individuals appointed to fill vacancies in elected positions are not considered employees under the ESST law.

Does ESST apply to building and construction industry employees?

Yes, but the requirements for ESST can be waived through a collective bargaining agreement with a bona fide building and construction trades labor organization. The waiver needs to reference the ESST law specifically to be considered valid.

If a building and construction trades labor organization represents employees of a non-building and construction trades employer (e.g., a manufacturer), can the parties negotiate an ESST waiver through collective bargaining?

No, the ESST law allows for a waiver that applies to building and construction industry employees.

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Earning hours: Accrual, carryover and front loading

When do employees begin to accrue ESST?

Employees begin accruing ESST on their first day of employment.

Do employees start accruing ESST before or after they have worked their first 80 hours for an employer?

ESST accrual begins immediately when an employee starts working for an employer.

What is accrual of hours?

Accrual of hours is when each ESST hour is added to a saved total the employee may use. Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, up to at least 48 hours a year.

Sample scenarios

- Manny works 30 hours a week at Classic Automotive and has worked there for seven months (28 weeks). Manuel has accrued 28 hours of ESST: 30 hours worked x 28 weeks = 840 hours worked. 840 divided by 30 = 28 hours of ESST.
- Sara works 40 hours a week at Mid-Minnesota Warehousing and has worked there for three weeks. Sara has accrued 4 hours of ESST: 40 hours worked x 3 weeks = 120 hours worked. 120 divided by 30 = 4 hours of ESST.

What is a “year” for purposes of the ESST law? January 1 – December 31

A “year” means any consecutive 12-month period of time as determined by an employer and clearly communicated to employees. Most employers will find it helpful to use one of the following: calendar year (Jan. 1 through Dec. 31); tax year; fiscal year; or year based on the employee’s anniversary date of employment. While the employer may determine the accrual year, it is important to note that all employees must either 1) start accruing hours by Jan. 1, 2024, or 2) have at least 48 hours front loaded by Jan. 1, 2024.

Can an employer put a cap on how many ESST hours an employee can accrue?

Yes, employers may set a cap or limit on each employee’s ESST accrual. Employers must allow each employee to accrue up to at least 48 hours a year, carried over from year to year, until an 80-hour maximum accrual is reached. These limits of 48 hours each year and a maximum accrual of 80 hours for each employee may be higher if an employer agrees, but not lower. See options 2 and 3 under the question, “How does ‘front loading’ versus accrual of hours affect carryover into the next year under Minnesota’s ESST law?” for front-loading options that do not involve required carryover.

Sample scenario

- Ali Consultants limits its employees’ accrual of ESST hours to the minimum standard of 80 hours. Michelle accrued 30 ESST hours by the end of the first year of her employment. These 30 hours carried over into the second year, during which she accrued an additional 48 hours. She did not use any of these accrued hours. In the third year, Michelle accrues an additional two ESST hours before stopping at a limit of 80 hours (30 + 48 + 2). Because the employer capped the number of ESST hours at 80, she must use some accrued hours in her “bank” of 80 hours before accruing more ESST hours.

How does a salaried and exempt employee accrue sick and safe time hours?

Employees who are exempt from overtime because they are professional, administrative, or executive employees are presumed to work 40 hours a week for the purposes of ESST accrual. If there is clear evidence an exempt employee’s regular work week is less than 40 hours, ESST may accrue based on that employee’s actual regular work week.

Do ESST hours accrue on overtime hours worked?

Yes. ESST hours accrue on all hours worked, including overtime hours, unless the employee is exempt from earning overtime compensation under exemptions for professional, administrative and executive employees.

Do hours accrue when the employee is not working (on vacation or out sick)?

The law does not require ESST hours to accrue when an employee is not working.

How frequently are ESST hours calculated?

Employers may calculate and record earned sick and safe time hours at the same frequency as the employer's other typical payroll practices (i.e., by pay period, whether that's weekly, biweekly, monthly, or twice monthly).

Are ESST hours accrued in hour blocks or are employers required to give employees partial ESST hours accrued if they work less than 30 hours in a pay period?

The ESST law does not require employers to credit employees for partial hours of ESST, such as a half-hour after 15 hours worked. Employers may credit ESST in 30-hour blocks, resulting in one hour of ESST. Employers may also choose to credit employees in partial hours of ESST, as long as they are earning ESST hours at a rate of at least one hour of ESST for every 30 hours worked.

Sample scenarios

- Michael works one five-hour shift per week, resulting in 10 hours of pay on his biweekly paycheck. It will take Michael three paychecks to accrue one hour of ESST. Michael's employer can either wait three pay periods and then provide Michael with one hour of accrued ESST, or the employer can choose to provide Michael with .33 hours of ESST biweekly.
- Wanda works 7.5 hours per day, five days a week, resulting in 75 hours worked on her biweekly paycheck. Wanda's employer prefers crediting partial ESST hours instead of waiting until full hours of ESST are earned. Wanda is credited with 2.5 hours of ESST biweekly.

Can an employee accrue ESST hours with more than one employer at a time?

Yes, ESST accrues at each employer for whom an employee works and accrual amounts are tied to each employer individually.

Do ESST hours accrue for on-call time? What if the on-call time is paid by the employer?

ESST hours must accrue for all hours worked. Whether on-call time is considered hours worked and therefore compensable time is very fact specific and generally depends on the degree of constraint on an employee's freedom during on-call time. Payment for on-call time does not, on its own, convert that time into hours worked. Employers who assign on-call shifts may want to seek the assistance of an employment law attorney to determine the applicability of ESST to those shifts.

Do unused ESST hours carry over from year to 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 under the question "How does 'front loading' versus accrual of hours affect carryover into the next year under Minnesota's ESST law?" Total accruals including carryover amounts may be capped at 80 hours of ESST.

Sample scenario

- Steve accrued 30 ESST hours by the end of the first year of employment. However, Steve did not use any of these ESST hours. Steve's employer must carry over those 30 hours into the following year. Steve may then accrue additional hours up to at least 48 in the second year.

How does "front loading" versus accrual of hours affect carryover into the next year under Minnesota's ESST law?

"Front loading" of ESST hours is an alternative method for providing ESST to employees. This option allows employers to record accrual of ESST once a year and avoid carry over of hours from year to year. Some employers may want to use this method to reduce the calculations and recordkeeping required for accrual by pay period (weekly, biweekly, twice monthly or monthly).

Employers may choose whether hours will accrue each pay period or be "front loaded" at the start of each year. Option 1 allows for carryover, but employers can avoid carryover requirements by using either Option 2 or 3.

Option 1. Accrual and carryover: District Plan Option Used for all part time and on call staff

- employees begin accruing ESST from their first day of employment;
- ESST accrues at a rate of at least one hour for every 30 hours worked;
- employees are permitted to accrue a minimum of up to 48 hours of ESST in a year (more if the employer agrees to a higher amount); and
- employees can carry over unused ESST into the next year. However, at no time can an employee's accrued ESST exceed 80 hours (unless the employer agrees to a higher amount).

Option 2. Front loading with pay out and no carryover: Not Used

- A minimum of 48 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- unused ESST hours are paid out at the end of the accrual year at the employee's base rate.

Option 3. Front loading with no pay out and no carryover: Not Used

- A minimum of 80 hours of ESST is provided to an employee and made available for immediate use at the start of each year; and
- the ESST hours the employee did not use are not paid out at the end of the accrual year.

Sample scenario

- Ana is a business owner. She employs Omar and front loads Omar's sick and safe time hours once a year. At the beginning of Omar's first year of employment, Ana front loads 48 hours into Omar's bank. He has 8 hours of remaining sick and safe time at the end of the first year, which Ana pays out. At the beginning of Omar's second year and every year thereafter, Ana front loads 80 hours into

Omar's bank; once using option 3 (see above), Ana is not required to pay out unused ESST hours at the end of the year.

May an employer front load yearly ESST hours for part-time employees?

Yes, an employer may front load yearly ESST hours for part-time or full-time employees, as long as it is for the total amount required under the front loading options – either 48 hours at the start of the year with payout of unused hours at the end of the year, or 80 hours at the start of the year with no pay out at the end of the year.

May an employer treat part-time and full-time employees differently? For example, can the employer front load ESST hours for some employees but not others?

Yes, an employer may treat part-time and full-time employees differently for purposes of ESST so long as the employer provides all employees at least what they are entitled to under Minnesota's ESST law and as long as the law is applied in a way that does not discriminate against an employee or group of employees based on a protected class, such as race, sex, or national origin.

What happens if an employer front loads paid time off before Jan. 1, 2024?

If an employer has a designated accrual year that started before Jan. 1, 2024, the employer can count leave time already provided and available for use as meeting the obligation under the front loading options. For example, if an employer's designated accrual year is Sept. 1 to Aug. 31, and the employer front loads 80 hours on Sept. 1, the employer has met its obligation on Jan. 1, 2024. To continue meeting its obligations under the front loading options, the employer must front load hours again on Sept. 1, 2024.

This answer does not contemplate the impact of provisions contained in a collective bargaining agreement.

Employers who take the above approach must also ensure that the applicable leave policy allows for all types of leave eligible under the ESST law (e.g., safe time) as of Jan. 1, 2024.

Sample scenario

- Bonnie works as a math teacher for a school district that front loads 80 hours of paid time at the start of the school year on Sept. 1, 2023. The district's designated accrual year runs from Sept. 1 until Aug. 31. The school district has met its obligations on Jan. 1, 2024, under the front loading options, but must front load hours again on Sept. 1, 2024.

For an employer whose accrual year starts prior to Jan. 1, 2024, can that employer count hours accrued prior to Jan. 1, 2024, towards the 48 hour annual maximum employee accrual (unless the employer agrees a higher maximum)?

Yes, if the accrual option is selected, the employee will continue to accrue ESST time after the Jan. 1, 2024, ESST law effective date. The employer can limit accrual to 48 hours per accrual year. Time accrued before Jan. 1, 2024, can count towards the 48 hours.

On the other hand, if the front loading option is selected, the employer must provide the employee 48 or 80 hours at the beginning of the designated accrual year. The designated accrual year does not need to begin on Jan. 1, 2024.

This answer does not contemplate the impact of provisions contained in a collective bargaining agreement.

Employers who take the above approach must also ensure that the applicable leave policy allows for all types of leave eligible under the ESST law (e.g., safe time) as of Jan. 1, 2024.

What is advancing ESST and how is it different from front loading ESST?

Advancing ESST means the employer provides ESST before an employee accrues it. Employers can use this method to meet an employee's immediate need for leave before the employee has accrued enough time. For example, if an employee has a medical emergency but is out of ESST, the employer may advance the time so the employee does not miss any pay during the absence.

Front loading ESST is a method that replaces the carryover requirement by providing a block of ESST at the start of each accrual year. It can only be done at the start of the accrual year, eliminates the obligation to carry over unused hours, is not based on anticipated hours worked and does not require the employer to account for actual hours worked.

May an employer prorate the front loading of ESST hours for partial-year employees or part-time employees?

No, the ESST law does not authorize prorating front-loaded hours. An employer must provide at least one hour of ESST for every 30 hours worked, up to at least 48 ESST hours per year, or front load at least 48 hours. However, an employer could choose to place new employees on an accrual system when hired, and then switch them to a front-loaded system at the beginning of the next accrual year.

Employers could also advance a prorated number of hours as long as they top-up the employees if they underestimate the hours.

Sample scenario

- Adam starts work on June 1. His employer anticipates he will work 900 hours during the remainder of the year and advances him 30 hours of ESST. However, Adam ends up working 930 hours, so his employer must provide him with another hour of ESST.

May an employer front load or advance yearly ESST hours for part-time employees?

Yes. Employers may front load ESST hours to part-time or full-time employees using one of the statutory front-loading options — either (1) 48 hours at the start of the year with a payout of unused hours at year-end, or (2) 80 hours at the start of the year with no payout of unused hours.

In addition, an employer may choose to advance ESST hours to an employee based on the number of hours the employer anticipates the employee will work for the remainder of the accrual year. This option is distinct from the front-loading methods above and allows employers to provide time before it is accrued. However, if the employee works more hours than anticipated, the employer must provide additional ESST to make up the difference between what was advanced and what should have been accrued based on actual hours worked.

Payout or transfer of ESST hours

Must unused ESST hours be paid out when an employee leaves their job?

Employers are not required to pay out any accrued or front loaded and unused ESST if an employee leaves their job, either voluntarily or involuntarily. However, employers may choose to do so. An employee who transfers positions or work units within a single employer retains their accumulated ESST.

Are ESST hours restored if an employee returns to work for a former employer?

An employee who returns to work for the same employer within 180 days of separation is entitled to the ESST hours accrued before leaving the employer.

If an employer pays out an employee's unused ESST hours when the employee leaves their job do they need to reinstate those same hours if they return to work for the same employer within 180 days?

No, an employer would not need to reinstate any hours that had been paid out when the employee previously left their job. However, if payout is not made at the time the employee leaves their job, then the employer must reinstate the unused ESST hours if the employee returns to work for the same employer within 180 days.

What happens to ESST hours if the workplace changes owners?

If a workplace changes ownership, retained employees keep their accrued and unused ESST. Employees who are terminated by the original owner as part of the change in ownership and are rehired by the new owner within 30 days of ownership change are also entitled to their accrued and unused ESST.

If an employee changes divisions within the same employer, can the employer pay out the employee's unused ESST and require the employee to start accruing new ESST hours in the new division?

No, an employee retains their ESST hours if they transfer to a separate division, entity or location within the same employer. **The District will transfer the ending balance of ESST for part time/on call staff going to contracted positions. This will become your new beginning sick leave balance. The District will transfer the ending balance of Sick Leave to ESST for contracted employees going part time/on call. This will become your new beginning ESST balance.**

Can employees transfer their ESST hours to coworkers under the ESST law?

The ESST law does not prohibit an employer from establishing a policy allowing employees to donate ESST hours to another employee.

Using ESST hours

When can employees start using accrued ESST hours?

Employees may use earned sick and safe time as it is accrued.

Can an employer require an employee to provide notice to use ESST leave?

An employer may require notice of up to seven 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, it 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.

Sample scenarios

- Victor works for Crescent Laundry Inc., which typically requires its employees to provide at least 24 hours advance notice of any absence per written policy. Two hours before Victor's shift, his child develops stomach pains and Victor needs to take her to the doctor. Under these circumstances, Victor does not need to comply with Crescent Laundry's 24-hour advance notice policy; rather, he should provide Crescent Laundry with notice as soon as practicable of his ESST use.
- Peter owns O's Market and employs Abdi. O's Market has a written policy requiring seven days advance notice from its employees for sick and safe time use when the absence is foreseeable. Abdi schedules a preventative care check-up for his daughter several months in advance of the check-up but forgets to inform O's Market until two days before the appointment. Under these circumstances, the employer may deny Abdi's use of ESST for the appointment as its written policy meets ESST requirements and the ESST use was foreseeable.

If an employee is using ESST for a foreseeable reason such as a yearly check up, and does not notify their employer until the day before the appointment, can the employer deny the employee's use of ESST?

An employer can require notice of intent to use ESST up to seven days in advance when ESST is used for a foreseeable reason. If the employer has a written policy regarding the procedures to provide notice up to seven days in advance and the employer has provided a copy of this written policy to the employee, the employer can deny the employee's request to use ESST if the employee did not follow the notice requirements in the policy.

Can an employer require an employee to provide documentation to use ESST leave?

An employer may require an employee to provide reasonable documentation of ESST use only when more than two consecutive scheduled workdays of ESST are used. 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.

Sample scenario

- Employee Kyle has used ESST for four consecutive days because of illness. As Kyle has used ESST for more than two consecutive scheduled workdays, Kyle's employer may condition approval of sick and safe time hours on requested documentation. However, if Kyle is unable to get documentation because he did not see a healthcare professional or he could not obtain the documentation from a healthcare professional in a reasonable timeframe or without added expense, Kyle can instead provide a written statement that he used the ESST leave for a qualifying purpose.

Can employers require documentation from employees after they use ESST for more than two consecutive calendar days or more than two consecutive scheduled work days?

Employers may require documentation if an employee misses more than two consecutive scheduled workdays.

Must an employee specifically ask to use "sick and safe time" in order to use it?

No, the law does not require that an employee specifically ask to use "sick and safe time" in order to use it.

Can an employer require an employee to provide specific details about the reason for using sick and safe time?

No, the law does not require that an employee provide specific details about the reason for using sick and safe time, including details related to the employee's or their family member's medical condition. After more than two consecutive scheduled workdays are missed for an ESST purpose, an employer may require reasonable documentation.

Does an employee have to find someone to cover their shift to use ESST?

No, employers are prohibited from making employees find replacement workers as a condition of using ESST. However, employees may voluntarily trade shifts if they choose to do so.

Does an employee have to use a certain amount of ESST for each absence?

Employees may use ESST in the same increments of time for which the employees are paid. Employers are not obligated to grant leave in increments smaller than 15 minutes. Additionally, employers cannot mandate that employees use sick and safe time increments larger than four hours.

Sample scenarios

- Ibrahim needs to take sick leave for a doctor's appointment. His employer pays him in 30-minute increments. Ibrahim can request sick leave in 30-minute increments for his appointment, but his employer is not required to grant leave in increments smaller than 15 minutes, such as 10 minutes. If

Ibrahim only needs two hours for his appointment, his employer cannot require him to take more than four hours of sick leave for it. Therefore, the employer cannot insist that he take an entire half-day (e.g., four hours) off when he only needs two hours.

- Hamda needs to take sick leave for a doctor's appointment. Hamda is an hourly employee whose employer pays wages in 15-minute increments. She can request to use ESST in 15-minute increments, up to as long as is needed for her absence.
- David's son has influenza and David needs to stay home in the morning to care for him. David is an exempt employee who is paid a salary. David's employer can require David use ESST in four-hour increments (half-day). In this case, David uses four hours of ESST and returns to work in the afternoon.

Does an employer's PTO policy meet the requirements of the ESST law if their employees can choose whether to use PTO for vacation, sick and safe time, or both?

As long as the PTO policy is as generous as what is required under the ESST law, an employer's PTO policy meets ESST requirements even if an employee chooses to use some or all PTO for vacation leave instead of ESST leave.

May an employee use ESST at the same time as other protected leave under other state or federal laws?

Yes, as the ESST law does not limit or otherwise affect the applicability of other laws that extend other protections to employees.

Can an employer require an employee to use ESST if they miss work for an ESST-eligible reason?

The ESST law does not require an employee to use ESST, but an employee may choose to use ESST for eligible purposes.

Can an employee's use of ESST be counted against them in relation to an employer's attendance policy or point system?

Employers cannot have policies or practices that adversely impact employees specifically for using ESST. Employers who are unsure if their policies or practices violate the ESST law's retaliation prohibition may want to seek the assistance of an employment law attorney for further guidance.

Can an employee use ESST during times the employer is in operation but the employee is not scheduled to work?

ESST is paid leave from work. If an employee is not scheduled to work, the ESST law does not require an employer to allow employees to use ESST.

One allowable use of ESST is when an employee's workplace is closed due to weather or public emergency. If an employer closes the place of business for reasons other than inclement weather or a public emergency, do they need to allow their employees to use ESST?

No. While an employer's paid time off policy may allow an employee to receive pay for those types of closures, it would not be required under the ESST law. Use of ESST when an employer is closed can be limited to closures related to weather and declared public emergencies. **Misc: E-learning/Snow Day**

What is considered a public emergency for purposes of ESST use?

A public emergency includes a declared emergency as defined in Minnesota Statutes section 12.03 or a declared local emergency under Minnesota Statutes section 12.29.

If there is a weather event or public emergency, can emergency or corrections personnel use ESST?

For most employees, if a weather event or public emergency closes an employer's place of business, the employee can use ESST. However, during such emergencies, ESST cannot be used by employees whose duties require them to work during such events. Likewise, firefighters, peace officers, 911 dispatchers, correctional guards and public employees holding a commercial driver's license cannot use ESST due to weather or public emergencies. An employee who is needed to maintain minimum staffing requirements may not use ESST during a weather or public emergency, if the employer has provided the employee sufficient notice that they are ineligible to use ESST in such a situation.

Can an employer require an employee to provide [employee illness log-related information](#) if the employee is using ESST?

Yes, limitations regarding employer requests for information or documentation when an employee uses ESST do not impact requirements under other laws.

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Rates of pay

At what rate must ESST be paid?

Employers must provide employees who use ESST with pay equal to the base rate the employee earns from employment. For employees paid on an hourly basis, the base rate is the same rate the employee receives per hour of work. If an employee receives multiple hourly rates, the employee should receive the rate the employee would have been paid for the period of time during which the leave is taken. For employees paid on a salary basis, the employee should receive the same rate guaranteed to the employee as if they had not taken leave. Finally, for employees paid solely on a commission, piecework, or any other basis other than hourly or a salary, the employer must pay the employee no less than the applicable local, state, or federal minimum wage, whichever is greater.

The base rate does not include:

- commissions;
- shift differentials;
- overtime;
- extra pay for working weekends, holidays or scheduled days off;

- bonuses; and
- tips or gratuities.

Is ESST paid at the wage rate at the time of accrual or the wage rate at the time ESST is used?

ESST must be paid at the base rate of pay for the shift for which the leave is being used.

If an employee has two or more different rates of pay for the same employer, what should the rate of pay be for sick and safe time hours used?

For employees paid on an hourly basis who receive multiple hourly rates, ESST is paid at the rate the employee would have been paid for the period of time in which leave was taken.

How does an employer determine the base rate for an employee who is paid based on productivity, commission or a daily rate?

For employees paid solely on a commission, piecework or any basis other than hourly or salary, the employer must pay them at least the applicable local, state or federal minimum wage, whichever is greater.

If an employee receives tips as part of their work, is their employer responsible for paying the employee their missed gratuities while on ESST leave?

The ESST law does not require employers to compensate employees for missed gratuities while on ESST leave.

If the shift for which an employee takes ESST leave would have brought them into overtime pay had they worked, is the employer responsible for paying an overtime rate for the ESST hours used for that shift?

The ESST law does not require employers to pay an overtime rate if the hours taken as ESST leave would have brought the employee into overtime pay had the employee worked.

If an employee receives a fixed stipend or other form of payment that is not reduced if the employee misses work, does the employer also need to pay a base rate to the employee for missed work due to an ESST-covered reason?

No, if an employee's compensation is not reduced for missing work, an employer would not need to pay a base rate for work missed for an ESST-covered reason.

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Recordkeeping and notice to employees

What ESST recordkeeping responsibilities do employers have?

At the end of each pay period employers must provide employees with:

1. the total number of ESST hours available for the employee to use; and
2. the total number of ESST hours that the employee used during that pay period.

Employers can choose how to provide this information, such as on an earnings statement or through an electronic system, including their company's online portal, timekeeping software or other accessible systems. If the information is provided electronically, employers must ensure that employees have access to a computer during their regular working hours to review and print their sick and safe time details.

Do employers need to provide employees with notice regarding their rights under the ESST law?

Yes, employers must provide notice to all employees that includes at least the following information:

- employees are entitled to ESST;
- the amount of ESST they will accrue;
- the accrual year for the employee (as set by the employer);
- the terms regarding when employees may use ESST;
- a copy of any existing written policy regarding employees providing notice to use ESST;
- an explanation that retaliation for requesting or using ESST is prohibited; and
- an explanation that employees have a right to file a complaint or to bring a civil action if ESST is denied or if employees are retaliated against for requesting or using ESST.

This notice needs to be provided to employees in English and the primary language of the employee. DLI has posted a sample notice for employer use; however, employers are not required to use the sample notice as long as their notice contains all of the required information above. The sample notice is available on the [Workplace notices and posters](#) webpage. It is in English and translated into additional languages; employers can request additional languages.

In what manner must employers provide the ESST notice to employees?

Employers must provide the ESST notice in a manner that is at least as effective as one of these options:

- posting a copy of the notice at each location where employees perform work;
- providing a paper or electronic copy of the notice to all employees; or
- posting the notice on a web-based or app-based platform that employees use to perform work.

An employer that provides an employee handbook to its employees must also include in the handbook a copy of the required earned sick and safe time information.

When must an employer provide the ESST notice to employees?

Employers must provide the ESST notice to employees upon the start of their employment or by January 1, 2024, when the ESST law goes into effect, whichever date is later.

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Other employer obligations

If an employer contracts with a staffing agency for temporary employees, which entity is responsible under Minnesota's ESST law to meet the sick and safe time obligations for the temporary employees?

Under Minnesota's ESST law, unless there is a contract that states otherwise, the staffing agency is responsible for the ESST obligations.

Does an employer have to keep medical information about employees confidential?

Yes, an employer must keep health and safety information about an employee or an employee's family member obtained because of the ESST law confidential unless the employee permits disclosure or the disclosure is required by law. Related medical records and documents must be maintained as confidential medical files separate from employee personnel files.

What insurance coverage responsibilities does an employer have while an employee uses ESST?

During ESST use, the employer must maintain coverage under any group insurance policy, group subscriber contract or health care plan for the employee and any dependents, as if the employee was not using ESST. The employee must continue to pay their share of the cost of such benefits.

Does an employer have to maintain ESST records?

Yes. Employers must retain all required records for three years and ensure they are readily available for inspection by the commissioner within 72 hours.

What remedies are available to employees if their employer doesn't provide ESST?

Employees may seek individual remedies in civil court to recover damages caused by violations.

An employer that fails to provide or allow ESST use as required is liable to employees for the amount of ESST they should have been provided or could have used, plus an equal amount as liquidated damages. If the exact ESST hours owed is unclear, employers are liable for 48 hours each year ESST was not provided, plus an equal amount as liquidated damages.

If my employees are covered by a collective bargaining agreement (CBA), do I still need to provide ESST? How does ESST interact with the provisions of a CBA?

Employers with covered employees in Minnesota must follow ESST laws. These laws provide minimum workplace benefits and protections that an employer must provide. An employer and the union representing the employees can negotiate ESST compliance into a CBA. Employers can use existing PTO to meet ESST requirements if it allows employees to take leave for the same reasons and under the same conditions as ESST. However, an employer cannot use the ESST law to diminish its obligations to comply with a CBA. For example, if a CBA provides for paid vacation leave, an employer cannot use its obligations under the ESST law to diminish that collectively bargained obligation.

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Complaints

What options does an employee have if their employer fails to provide ESST or retaliates against an employee for exercising their rights under the ESST law?

The employee can contact the Minnesota Department of Labor and Industry (DLI) to submit a complaint. In addition, employees may bring a civil lawsuit to remedy ESST violations.

How are complaints filed with DLI?

Complaints regarding violations of the earned sick and safe time requirements can be submitted to DLI's Labor Standards Division at 651-284-5075 or esst.dli@state.mn.us.

Can complaints be filed anonymously?

Complaints can be filed anonymously but it may be helpful for DLI to have name and contact information for follow up.

ESST requirements are set by statute.