

PROPOSED RULES

City of Saint Paul Rules for Earned Sick and Safe Time Ordinance

Contents

Purpose of the Earned Sick and Safe Time (ESST) Ordinance and Rules	2
Definitions.....	2
Which Employees are covered by the ESST Ordinance?	3
Use of Earned Sick and Safe Time.....	6
Paying Employees When They Use ESST	8
When an Existing PTO Policy Complies with the Ordinance	10
Notice from Employee to Employer about Using ESST	10
Employer Notice and Posting Requirements.....	13
Records an Employer Must Keep.....	14
Integrated Enterprises	15
Staffing Agencies and Temporary Employees	15
Enforcement of ESST Ordinance.....	16
Remedies for Violation of ESST Ordinance	19
Retaliation Against Employees is Prohibited	19
Civil Enforcement and Private Right of Action	20
New Employers Established After Ordinance Effective Date	20
Other Leave Such As FMLA	21

Purpose of the Earned Sick and Safe Time (ESST) Ordinance and Rules

([Saint Paul City Ordinance §233.01](#))

The purposes of the Earned Sick and Safe Time (ESST) Ordinance are:

- 1) To ensure that all workers in the City of Saint Paul can address their own health needs and the health needs of their family members by requiring employers to provide a minimum level of earned sick leave, including leave for care for family members;
- 2) To diminish public and private health-care costs and promote preventative health services in the City of Saint Paul by enabling workers to seek routine medical care for themselves and their family members;
- 3) To protect the public's health in Saint Paul by reducing the risk and spread of contagion;
- 4) To assist victims of domestic abuse and their family members by providing them with job protected paid leave away from work to allow them to receive treatment and take the necessary steps to ensure their protection;
- 5) To promote the economic security and stability of workers and their families, as well as businesses serving the City of Saint Paul and its residents;
- 6) To protect residents and all workers in the City of Saint Paul from losing their jobs or facing discipline as a result of illness and use of sick leave to care for themselves or their family members; and,
- 7) To safeguard the public welfare, health, safety, and prosperity of the people in the City of Saint Paul.

These rules govern the practices of the Department of Human Rights & Equal Employment Opportunity (“HREEO”) in administering the provisions of the ESST Law ([Chapter](#) 233 of the City of Saint Paul Legislative Code).

Definitions

([Saint Paul City Ordinance §233.02](#))

“City” means the City of Saint Paul, Minnesota.

“Contracting employer” is an employer that contracts with a staffing agency to receive workers.

“Department” means the Saint Paul Department of Human Rights & Equal Employment Opportunity (“HREEO”).

“Director” means the Director of the Department of Human Rights & Equal Economic Opportunity.

“Employee” as defined in Section 233.02 of the ordinance.

“Employer” as defined in Section 233.02 of the ordinance.

“ESST” means earned sick and safe time.

“ESST poster” means the standard workplace poster created by Department.

“Frontloading” means to provide all required hours at the beginning of a reporting year.

“Independent contractor” has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules.

“Integrated Enterprises” means separate entities that form a single enterprise. Integrated enterprises are a single employer under the Ordinance. Examples of an integrated enterprise include, but are not limited to, a single entrepreneur with multiple businesses, a corporation with subsidiaries in the City, a corporation with franchisees located in the City, etc.

“Piecework compensation” means paying employees based on how much they produce, rather than an hourly rate. Piecework compensation is common to agricultural work, call centers, translation, data entry, and manufacturing, for example.

“Ordinance” means [Title XXII Chapter 233 of the City of Saint Paul Legislative Code](#), “Public Health, Safety and Welfare.”

“PTO” means Paid Time Off.

“Staffing Agency” is any business that provides workers to a contracting employer in exchange for compensation or some other benefit, either temporarily or with the possibility of permanent employment, and during which time workers do not provide any labor directly to the staffing agency. The workers may be paid either by the staffing agency or the contracting employer.

“Year” means a regular and consecutive 12-month period, either calendar or fiscal, as determined by an employer and clearly communicated to each employee of that employer.

Which Employees are covered by the ESST Ordinance?

[\(City of Saint Paul Ordinance § 233.02\)](#)

General Rules about Covered Employees

1. Employees who work within the geographic boundaries of the City of Saint Paul are covered pursuant to Section 233.02 of the Ordinance.
2. Time spent traveling to work before the employee’s shift has started and traveling home after the employee’s shift has ended are not covered by this Ordinance.
3. Temporary workers are covered by the Ordinance if they work within the geographic boundaries of the City of Saint Paul for at least 80 hours in a year for an employer.

Employees Traveling Through Saint Paul, or Working from Home

1. Employees working from home (or otherwise telecommuting) are covered by the Ordinance if the employee is working within the geographic boundaries of the City of Saint Paul.
2. Employees working outside of Saint Paul are not covered by the Ordinance for hours worked outside the City. For example, if Bill works for a consulting business in Saint Paul and travels to Rochester, he will not accrue ESST for the time he works in Rochester. He only accrues ESST while he works in Saint Paul.
3. Employees who do not regularly work in the City are covered by the Ordinance if they work at least 80 hours within the geographic boundaries of the City of Saint Paul in one year, and the protections of the Ordinance apply only for the time scheduled and worked within the geographic boundaries of the City of Saint Paul. Once an employee performs work in the geographic boundaries of the City of Saint Paul for at least 80 hours in a year, that employee is covered by the Ordinance for the remainder of that year for work scheduled and done within the geographic boundaries of the City of Saint Paul. Employees who travel and make a stop for work (for example, to make pickups, deliveries, sales calls, etc.) are covered by the ordinance for all hours that they perform work within the geographic boundaries of the City of Saint Paul. This includes travel between work sites after having attained at least 80 hours in a year.
4. Employees who travel through the City and only make incidental stops, such as for gasoline, or changing a flat tire, are not making a stop as a purpose of their work.

Independent Contractors exempt from the ESST ordinance

1. Independent Contractors are not subject to the ESST ordinance. “Independent contractor” has the meaning defined in the Labor and Industry Chapters of the Minnesota Statutes Sections 181.723 and 176.042, as defined in Minnesota Rules Chapter 5224, or as defined in any subsequent related statutes or rules.
2. How employees accrue and bank ESST

[\(City of Saint Paul Ordinance § 233.03\)](#)

General Rules about Accrual

1. Employers must establish the method of compliance with this subsection either through accrual and carryover or frontloading at the beginning of the year. Employers may not change the method until the next reporting year.
2. Per the accrual method, employees accrue one hour of ESST for every 30 hours worked. For example, if Nancy works 120 hours, she accrues 4 hours of ESST (120 hours worked / 30 = 4 hours of ESST).
3. Employees begin accruing ESST on their start date.
4. When calculating how many ESST hours an employee has accrued, employers must count all hours actually worked. Employers are not required to count the hours taken off for ESST. For example,

if James works 60 hours and uses 30 hours of ESST, James earns 2 hours of ESST ($60 / 30 = 2$), not 3 hours of ESST ($90 / 3 = 3$).

5. Hourly employees accrue ESST when they work overtime hours. There is no requirement to provide an “overtime rate” for ESST accrual.
6. Employees can accrue up to 80 hours in one year, unless their employer opts to give them more ESST.
7. Employers are not required to permit carry over of unused earned sick and safe time if they frontload employees at least:
 - a. Forty-eight (48) hours of earned sick and safe time for use by the employee during the first year of employment. The number of hours must be made known to the employee from the commencement of their employment, but the employer is not required to allow them to use available hours until they have surpassed the initial 90 days of employment. ; and
 - b. Eighty (80) hours of earned sick and safe time at the beginning of each subsequent year.
8. Modifying Method of Compliance. Employers who switch between Accrual compliance and Frontloading compliance must ensure that employees have at least as many Earned Sick and Safe Time hours available on the first day of the new reporting year as the employee had on the last day of the immediately preceding reporting year.
9. For employers who switch from Accrual to Frontloading, the total Earned Sick and Safe Time hours Frontloaded on the first day of the reporting year must be at least 48 hours for employees in their first year of employment, but need not be greater than 80 hours for all other employees.
10. For employers who switch from Frontloading to Accrual, the total balance available to the employee at the start of the first reporting year after the employer has modified the method of compliance shall be at least equal to the Frontloading balance remaining at the end of the immediately preceding reporting year.
11. Frontloading is permissible as long as it meets the minimal requirements of the Ordinance. For example, Jessica works for Best Eastern in Saint Paul. Best Eastern would rather not track accrual, so they give Jessica 48 hours up front when she is hired, and 80 hours up front every year thereafter. Best Eastern is compliant with the ordinance.

Carrying Over ESST Balances from Year to Year

1. Under the accrual method, unused ESST carries over from year to year.
2. The maximum number of hours an employee can carry in the bank is 80, unless their employer opts to allow the employee to carry over more.
3. Employers are required to permit employees to maintain and/or use their carried over ESST time while concurrently accruing new ESST for every hour worked. For example, Gaston begins working for a sporting goods store in Saint Paul and earns 30 hours in his first year. In his second year, he takes 5 hours. Gaston could still earn 48 hours and end the year with 73 hours of ESST ($30 \text{ hours} - 5 \text{ hours} = 25 \text{ hours}$. $25 \text{ hours} + 48 \text{ hours} = 73 \text{ hours of ESST}$).

ESST Accrual Method for Salaried, On-Call, and Seasonal Employees

1. Salaried employees accrue ESST based on their expected hours worked per week. For example, Jeremy is a salaried employee who usually works at least 40 hours per week. After 3 weeks, Jeremy will earn 4 hours of ESST (40 hours per week X 3 weeks = 120 hours / 30 = 4 hours of ESST). However, if the employee actually works less than 40 hours per week, the employer may permit the employee to accrue sick leave based on actual hours worked.
2. For employees who are scheduled for on-call shifts and are paid for the scheduled time, regardless of whether work is performed, employers must calculate accrual of ESST based on all hours the employee is scheduled.
3. For employees who are scheduled for on-call shifts and are compensated only if work is performed, employers may calculate accrual of ESST based only on hours actually worked. For example, Sara works for Rick's Restaurant in Saint Paul near Xcel Energy Center. The Wild play a hockey game on Thursday night, and there is often a rush of customers before and after the game. Rick's puts Sara on call for the night from 4:00 pm – 10:00 pm. At 6:00, Rick's calls Sara in, and she works until 10:00. Rick's pays Sara only for the four hours worked. Sara earns ESST for the four hours she works, not for the six total hours she was on call.
4. Per section 233.10 of the ordinance, when an employee is separated from employment and rehired within 90 calendar days by the same employer, the employee is treated as if they were never separated from employment. Previously accrued and unused ESST must be reinstated. The employee's hours worked before being separated count when determining the employee's eligibility to use accrued ESST.

Use of Earned Sick and Safe Time

[\(Saint Paul City Ordinance §233.04\)](#)

General Rules about Using ESST

1. All covered employees who perform at least 80 hours of work in a year within the geographic boundaries of the City of Saint Paul can use ESST for hours that they are scheduled to perform work in Saint Paul.
2. Employees can use ESST for overtime hours that they are scheduled to work or that they volunteered to work. ESST used for scheduled overtime is required to be paid only at an employee's regular rate, not at their overtime rate.
3. Employers are not required to permit use of ESST when an employee is suspended or otherwise on leave for disciplinary reasons.
4. Employees who work at least 80 hours in 12 months in Saint Paul can begin using ESST 90 days after their start date. "Days" means calendar days, not working days or business days. For example, if Ethan begins working 30 hours per week on March 1, and works for 150 hours between March 1 and May 30, he would be able to use up to 5 hours of ESST starting on May 30 (May 30 is 90 calendar days after March 1, and 150 hours / 30 = 5 hours of ESST).

Employer Requirements for Minimum Usage of ESST

1. Employers may establish their own increments of time for using ESST so it is consistent with their existing business practice, provided that their practice complies with the Ordinance and these rules.
2. The smallest unit of time established by the employer may not exceed four hours. However, if the employee has an ESST balance below the minimum time allowed by the employer, the employer must allow the employee to use their balance.
 - a. For example, Jerome works for Camera Exchange. Camera Exchange allows employees to use ESST, but requires employees to use at least 4 hours of ESST if they request to use any. Jerome has 7 hours of ESST saved and requests time off to go to the doctor. Camera Exchange must allow Jerome to use his ESST but can require that he use 4 hours.
 - b. However, after Jerome uses his 4 hours, he needs a follow-up doctor visit, so he requests to use his remaining 3 hours of ESST. This is below Camera Exchange's 4 hours minimum. Camera Exchange must allow Jerome to use the 3 hours of ESST that he has saved.

Use of ESST by On-Call Employees

1. For employees who are scheduled for on-call shifts and are paid for the scheduled time, regardless of whether work is performed, employers must permit use of ESST for all hours the employee is typically scheduled.
2. For employees who are scheduled for on-call shifts and are compensated only if work is performed, employers must permit use of ESST only for hours the employee actually was called in to work and would have received compensation.

Prevailing Wage Exemption

[\(Saint Paul Ordinance Section 233.04\(h\)\)](#)

1. An employee will not accrue ESST for the hours they are paid the equivalent of the prevailing wage for a craft or trade within the City of Saint Paul if:
 - a. an employer has a construction worker whose craft or trade is listed on a Minnesota Department of Labor and Industry wage decision published within the last three years; and,
 - b. the employer pays the employee at least the minimal prevailing wage rate for that craft or trade if it is work typically performed by that employee.
2. An employee will not accrue ESST for the hours they are paid at the apprenticeship rate for a craft or trade within the City of Saint Paul if:

- a. an employer utilizes an apprentice that is in a registered Minnesota Department of Labor and Industry or equivalent apprenticeship program; and,
 - b. the apprentice is compensated at least the minimal hourly rate required under the agreement.
3. If at any time the employer does not pay the equivalent of the prevailing wage rate or registered apprentice rate, they must permit the employees to start accruing ESST pursuant to the Ordinance and these rules.
4. The employer must still abide by the requirements of [Saint Paul Ordinance §233.09](#) regarding employee payroll records.

Paying Employees When They Use ESST

([Saint Paul Ordinance §233.04\(d\)](#))

Payment of Sick Time

Sick time must be paid on the date the employee would have been paid for work, had the employee not used ESST.

Paying ESST to Hourly Employees Versus Salaried Employees

1. All employees who perform work within the geographic boundaries of the City of Saint Paul earn ESST.
2. When using ESST, hourly employees are compensated at their standard hourly rate.
3. If an employee was scheduled to work overtime but uses ESST for the scheduled overtime, their employer is not required to pay the employee at the overtime rate. For example, Shauna is scheduled to work 5 hours of overtime on Saturday. Shauna's standard hourly wage is \$12/hour. She normally makes time-and-a-half working overtime, or \$18/hour. Shauna's employer only has to pay her the standard rate of \$12/hour for the ESST used during her scheduled overtime.
4. To calculate the hourly rate of ESST for salaried employees:
 - a. Take the employee's total annual salary.
 - b. Divide the annual salary by the number of weeks worked per year. This is the employee's weekly salary.
 - c. Divide the weekly salary by the number of hours of the employee's normal work week.
 - d. Example: John earns \$80,000 salary and is not paid by the hour, but on average works 40 hours per week. John's annual salary is \$80,000. His weekly salary is \$1,538.46 ($\$80,000 / 52 = \$1,538.46$). If John's normal work week is 40 hours, John's hourly salary is \$38.46 ($\$1,538.46 / 40 = \38.46). His hourly ESST rate would be \$38.46.

Tips, Commissions, and Other Fluctuating Wages

1. Employees are not entitled to compensation for lost tips or commissions. ESST is required only for hours that an employee is scheduled to have worked.
2. For employees who are paid on a commission or with tips, the hourly rate of pay is the base wage.
3. For employees whose rate of pay fluctuates within a single job title depending on what duties they are performing for the employer, the hourly ESST rate is the standard hourly rate for the employee. For example, Richard is paid \$10.00 per hour as a grocer, but sometimes receives a “premium” rate of \$.50 per hour extra for operating a forklift. Richard is scheduled to operate the forklift during his next shift but calls in sick and uses his ESST. His ESST is paid out at \$10.00 per hour because that is his standard rate of pay.
4. For employees whose rate of pay fluctuates between two different job titles, their hourly ESST rate is the standard hourly rate for the job they were scheduled to work when they used ESST. For example, Bianca works two different jobs for a small law firm. Bianca regularly works 20 hours per week as a legal secretary and earns a standard rate of \$20 per hour. For the other 20 hours per week, she works as a paralegal and earns \$25 per hour. Bianca calls in sick for two days and uses ESST. Both days, she was scheduled to work as a paralegal. Her ESST is paid out at a rate of \$25 per hour because this was the standard rate for the time for which scheduled to work as a paralegal.
5. For employees who are scheduled to work a shift of uncertain length, (such as a shift that is defined by business needs rather than a specific number of hours), the employer may determine payment for ESST based on hours worked by a replacement employee. The replacement employee either must have worked the same shift or a similar shift. The employer must demonstrate this by way of documentation if there is an investigation.

Piecework Compensation

For employees who are paid on a piecework basis, the employer calculates the employee’s rate of pay by doing the following:

1. Add together the employee’s total earnings for the most recent workweek in which no sick time was taken. This is the employee’s total weekly earnings.
2. Divide the total weekly earnings by the number of hours worked during the most recent workweek with no sick time used. This is the employee’s hourly ESST rate.
3. Example: Va Meng works in a call center. He takes calls and does data entry. Va Meng is paid \$1.00 for every call he takes. He is paid \$1.00 for every 30 entries he makes. Last week, Va Meng took 700 calls and entered 3,000 lines of data. He worked 30 hours. Va Meng was paid \$700 for his phone calls and \$100 for data entry. His total earnings were \$800 ($\$700 + \$100 = \800). His hourly rate is \$26.67 ($\$800 / 30 \text{ hours} = \26.67 per hour). Va Meng requests ESST the following week. His employer must reimburse him at a rate of \$26.67 per hour.

When an Existing PTO Policy Complies with the Ordinance

[\(Saint Paul City Ordinance §233.03\(d\)\)](#)

1. If an employer has a PTO policy in place that meets or exceeds the minimum requirements of the Ordinance, the PTO policy is sufficient and the employer does not need to provide additional ESST.
 - a. When an employer offers a combined or universal or PTO leave policy made up of a combination of sick, personal and vacation leave, the employer may require an employee to comply with the employer's usual and customary notice and procedural requirements for absences or for requesting leave. However, notice requirements may not interfere with the purposes for which the leave is needed.
 - b. For example, David's employer has a PTO policy that meets the requirements of the Ordinance. That policy requires David to provide notice one week in advance of taking leave. Under most circumstances, this is a permissible requirement. However, David needs to take time off unexpectedly to care for his sick child. The Ordinance requires David's employer to allow him to use ESST for that purpose, so they cannot deny him leave. However, they could deny David's request for PTO for lack of notice if he requested time off for vacation.
2. An employer may require employees to use other paid leave for the purposes of ESST provided that the employer meets the minimum requirements of the Ordinance (such as accrual, use, carry over, employee notification and record keeping, etc.).
3. If an employee uses all paid leave under a general PTO policy for a reason unrelated to ESST, the employer does not need to provide additional leave for ESST under the Ordinance. For example, if Ashley's employer offers 80 hours of PTO, and Ashley uses all of her hours on a vacation, her employer does not need to offer more paid time off for ESST because her employer has provided the minimum amount of PTO.
4. An employer providing a combined or universal leave, such as a PTO policy, that meets the minimum requirements of the Ordinance, is not required to maintain records showing employee reasons for use of the PTO (e.g., vacation, sick time, safe time, FMLA leave, etc.), only that PTO was used and how much was used.
5. If the employer provides combined leave, such as PTO, in order to meet their ESST requirement, then the employer's written ESST policy must inform employees of their right to ESST and that it is being met by PTO.

Notice from Employee to Employer about Using ESST

[\(Saint Paul City Ordinance §233.07\)](#)

Notice from Employees, Generally

1. An employer may require an employee to provide notice of an absence for ESST as long as the requirements are consistent with the employer's regular practice and do not interfere with the purposes of the leave.

- a. An employee may provide reasonable notice of an absence for ESST without explicitly referencing the Ordinance or using the terms “earned sick and safe time.”
 - b. An employer may ask whether the absence qualifies for ESST, provided that the employer does not violate the privacy and confidentiality provisions of the Ordinance (see [Saint Paul City Ordinance § 233.09](#)).
2. When an employee uses ESST for more than three consecutive days, an employer may require reasonable documentation that the paid time is being used for a reason that is consistent with the Ordinance. For purposes of the Ordinance, “consecutive” means any three days the employee is scheduled to work, and not does have to be three consecutive calendar days.
3. If the reason for ESST is unforeseeable, the employee must provide notice as soon as practicable. Notice may be provided by the employee’s spokesperson (e.g., spouse, domestic partner, adult family member or other responsible party).
4. An employee is not required to disclose the specific nature of the illness or specific reason for seeking safe time, beyond informing the employer of their need for it.
5. When there is a pattern of abuse of ESST by the employee, the employer may require reasonable documentation to verify that an employee’s use of ESST is consistent with the Ordinance. However, the employer may not interfere with the employee’s ability to use ESST for reasons laid out in the Ordinance.
6. Reasonable documentation for sick time includes any documentation that indicates the employee sought and received medical treatment. This includes, but is not limited to, a doctor’s note.
7. An employer may not require an employee to obtain documentation from more than one health care provider for a single use of ESST.
8. If an employer requires an employee to provide a doctor’s note for using ESST, the employee must be allowed at least of 14 days from the date his or her return date obtain such documentation. The employee is responsible for the cost of such documentation not covered by insurance or any other benefit plan.
9. If an employee works between using ESST absences, the employer may only request additional documentation for the second absence if at least two weeks have passed. For example, Jim pulls a muscle in his back and tells his employer, Tom’s Tubs, that he will be on leave for three days, from Monday – Wednesday, and provides a Doctor’s note. Jim comes back to work on Thursday. On Thursday night, Jim’s back flares up again, and he calls and tells Tom’s Tubs that he will be out again on Friday due to his back injury resurfacing. Tom’s cannot require additional documentation for the second absence, because less than two weeks has passed.

Contents of the Employee Notice

If an employee works between using ESST absences, the employer cannot always require additional documentation for the second absence. When an employee works between ESST absences, the employer may only request additional documentation for the second absence if at least two weeks have passed.

For example, Jim pulls a muscle in his back and tells his employer, Tom's Tubs, that he will be on leave for three days, from Monday – Wednesday, and provides a Doctor's note. Jim comes back to work on Thursday. On Thursday night, Jim's back flares up again, and he calls and tells Tom's Tubs that he will be out again on Friday due to his back injury resurfacing. Tom's cannot require additional documentation for the second absence, because less than two weeks has passed.

Notice Regarding Safe Time

Reasonable documentation for paid safe time must communicate that the employee or the employee's family member is experiencing domestic violence, sexual assault, or stalking and that the leave as taken for a purpose covered by the Ordinance. Reasonable documentation may include a police report, court order, or an employee's written statement.

Employer Notice and Posting Requirements

[\(Saint Paul City Ordinance §233.07\)](#)

1. Every employer must distribute or post written policies on ESST and follow such written policies. An employer's written policies must meet or exceed all of the requirements of the Ordinance and these rules. Employers can satisfy the notice requirements by:
 - a. Regularly distributing the written ESST policies to each employee personally, by regular mail or by e-mail.
 - b. Regularly distributing the written ESST to employees through things like company newspapers or newsletters, check stubs, handbooks or manuals, or posting on the company intranet; or
 - c. Posting the policies in a noticeable place where notices to employees are typically posted.
2. The Department has a standard workplace notice poster for employers. The employer may use the standardized workplace poster to hang up in a noticeable place, such as in a breakroom, by a punch clock, or at some common work meeting place. By posting the poster in a noticeable place, an employer satisfies written posting requirements.
3. If the employer does not utilize the ESST poster but rather provides their own written notice, it must contain, at a minimum, the following information:
 - a. Employees are entitled to ESST;
 - b. When accrual starts;
 - c. When an employee may begin using ESST;
 - d. The rate at which an employee accrues ESST;
 - e. The maximum number of hours an employee may accrue in a calendar year;
 - f. How ESST carries over to the next year;
 - g. The employer's notice requirements for using ESST;
 - h. If the employer has a requirement for documentation, the requirements for providing written documentation from health care provider if ESST exceeds three days;
 - i. Employer's disciplinary policy for employee's suspected of abusing ESST;
 - j. That the employee can file a complaint with the Department; and,
 - k. That employer retaliation is prohibited, and an employee may file a civil action for retaliation.
4. If the employer has employees who speak languages other than English, the Department may require an employer to post a Department-provided ESST poster in any language the Department determines is necessary to inform the employer's employees of their rights under the ESST Ordinance.

5. If the employer provides ESST at the beginning of the year, in the form of frontloading, then the employer's written ESST policy must specify this to the employees.
6. In all cases, employer notification to employees must be likely to reach all employees who perform work in the geographic boundaries of the City of Saint Paul, should enable an employee to provide reasonable notice of their desire to use ESST, and must be documented.

Records an Employer Must Keep

[\(Saint Paul City Ordinance §233.09\)](#)

1. Employer records must, at a minimum, maintain the following three items:
 - a. Employee hours worked in St. Paul;
 - b. Accrued ESST time; and,
 - c. Used ESST time.
2. Per section 233.08 of the ordinance, if an employee makes any request for information regarding how much ESST the employee has available or how much has been used, the employer must provide an answer within 24 hours.
 - a. If employee wants to use ESST immediately and the need to use ESST was unforeseen, the employer must inform the employee of their ESST balance as soon as practicable.
 - b. Upon the request of the employee, the employer must provide this information either in writing or electronic form.
3. Employers may track total employee hours worked, rather than hours worked within the geographic boundaries of the City of Saint Paul, if they already provide some form of paid time off that meets the requirements of the Ordinance.
4. Employers must retain records demonstrating compliance with the Ordinance for a period of at least three years.
5. Once the Department notifies the employer that an investigation has commenced the employer may not destroy any records until the employer is notified by the Department that the investigation has concluded and records older than three years can be destroyed.
6. Upon receipt of a Notice of Investigation from the Department, an employer must make their records available to the Department, per § 233.13. If an employer does not supply the required records, it creates a rebuttable presumption that the employer has violated the Ordinance.
7. For salaried employees who work in Saint Paul on a regular basis, employers may retain records of the employee's regular workweek hours, rather than tracking actual hours worked in Saint Paul, as long as the hours of a normal work week is used as the actual basis for the employee's accrued and used ESST.

Integrated Enterprises

1. The Department will determine the existence of an integrated enterprise by assessing the degree of control exercised by one entity over the operation of another entity. The factors in this assessment include, but are not limited to:
 - a. Degree of interrelation between the operations;
 - b. Degree to which the entities share common management;
 - c. Centralized control of labor relations; and/or,
 - d. Degree of common ownership or financial control over the entities.
2. If the Department determines an integrated enterprise exists, the integrated employer must provide ESST to every employee working within the City.

Staffing Agencies and Temporary Employees

[\(Saint Paul City Ordinance §233.02\)](#)

1. An employee supplied by a staffing agency is an employee of the staffing agency for purposes of the Ordinance, unless there is a contractual agreement stating otherwise.
2. All employees, including temporary workers supplied by a staffing agency located outside the City who perform their work within the geographic boundaries of the City of Saint Paul, are entitled to ESST if they work within the geographic boundaries of the City for at least 80 hours in a year.

Sale of Business: Effects on ESST

[\(Saint Paul City Ordinance §233.11\(b\)\)](#)

1. If an employer sells its business or the business is otherwise acquired by another business, employees retain and may use all accrued sick time if the employee continues to work within the geographic boundaries of the City of Saint Paul for the successor employer, regardless of where the successor's headquarters is located.
2. A successor employer must provide employees with its written ESST policies at the time of sale or acquisition, or as soon as practicable, which must include a policy that complies with the Ordinance.

Enforcement of ESST Ordinance

([Saint Paul City Ordinance §233.13](#))

Time limitations

Any person alleging a violation of the Ordinance shall have the right to file a complaint with the Department within two (2) years of the alleged violation.

Confidentiality of Information

Per City of Saint Paul Administrative Code § 11.03(d) the Department shall maintain the confidentiality of any complainant unless disclosure of such complainant's identity is necessary for resolution of the investigation or otherwise required by law. The Department shall, to the extent practicable, notify such complainant that the Department will be disclosing his or her identity prior to such disclosure.

Investigation Process

1. The Department will investigate all complaints and attempt to resolve all complaints through informal mediation between the complainant, the employer and the Department.
2. The Department begins an investigation by sending to the employer via US Mail a notice of investigation setting forth the allegations and the pertinent facts. The notice of investigation will include a request to the employer to respond to the allegations in a written response.
3. The employer must provide a written response, via US Mail, fax or e-mail, to the Department within 30 days of receiving the Department's notice of investigation. The written response must specifically state the employer's position regarding the allegations set forth in the notice of investigation. If the employer admits to violating the Ordinance, they must answer how they will remedy the violation and make the complainant whole. If the employer denies the allegations, they must specifically state how the employer is in compliance with the Ordinance.
4. The Department may request any relevant additional information during the investigation. It must be provided within 30 days from the day the request is made. The employer may provide any additional information with the original written response or subsequent request for additional information it believes is relevant to the investigation, and the Department will consider it.
5. All information received will become a part of the final record. Prior to making a determination, the Department will make a final request for information. Any information received from either party after the deadline for the Department's final request will not be considered and will not be a part of the record.

6. If the employer fails to provide a written response within 30 days or fails to provide any other requested information, the Department will make its decision without the benefit of the employer's input. The Department will rely only on the information provided to the Department. The employer may request additional time to submit the written response or a response to a request for further information to the Department. Such a request should include the amount of time requested and the reason that the employer cannot respond within the original time allowed. The Department's grant or denial of this request is not appealable.
7. Except when there is an agreed upon settlement, after considering all information provided by all parties, the Department will issue a written notice of Determination of Violation/no Violation. Determinations are made based on a preponderance of the evidence standard.
 - a. *Contents of notice of violation.* If the department determines that cause exists to believe that an employer has violated this chapter, the city attorney's office on behalf of the department shall issue a notice of violation to the employer signed by the Director and the city attorney's office. The notice shall advise the employer of the following: That the city believes the employer has violated this chapter;
 - b. The basis for the city's belief
 - c. The amount of restitution owed and penalty sought;
 - d. That the employer is entitled to a hearing before any restitution or penalty is imposed; and
 - e. That the employer can choose to admit or deny the allegations.
 - i If the employer wishes to admit the allegations but contest the proposed restitution or sanction, the employer may request a hearing before the council regarding the proposed restitution or, if applicable, penalty.
 - ii If the employer wishes to deny the allegations, then the employer must request a hearing before a hearing examiner
 - iii Failure to respond in writing within fifteen (15) working days of the notice of violation shall be deemed an admission of the allegations and acceptance of the proposed restitution and, if applicable, penalty.
8. The Determination will be sent to the complainant who filed the suspected violation report and the employer via either US Mail, fax or e-mail.
9. In instances when the Department issues a Notice of Determination of no Violation, the complainant who filed the suspected violation report may, within twenty-one (21) days, file a request for reconsideration of a notice of determination of no violation with the director. The director must provide a written response on the reconsideration within ten (10) days.
10. Failure to respond in writing within fifteen (15) working days of a Notice of Violation is deemed an admission of the allegations and acceptance of the proposed restitution and fines.
11. There are two options for employers to appeal:

- a. If the employer admits the allegations but wants to contest the proposed restitution or sanction, the employer may request a hearing before the Council on that issue.
- b. If the employer denies the allegations and the rejects the restitution or sanction, the employer may request a hearing before a hearing examiner.
 - i. The hearing examiner shall hear all evidence as may be presented on behalf of the city and the employer
 - ii. Both parties shall be provided an opportunity to present evidence and argument as well as meet adverse testimony or evidence by reasonable cross-examination and rebuttal evidence. The hearing examiner may in his/her discretion permit other interested persons the opportunity to present testimony or evidence or otherwise participate in such hearing. Following the hearing, the hearing examiner shall present to the council written findings of fact and conclusions of law together with a recommendation regarding the appropriate sanction, including restitution.
 - iii. Record; evidence. The hearing examiner shall receive and keep record of such proceedings, including testimony and exhibits, and shall receive and give weight to evidence, including hearsay evidence, which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs.
 - iv. The city must prove that the employer violated one or more provisions of this chapter by a preponderance of the evidence.

Council Determination

1. The council shall consider the evidence contained in the record, the hearing examiner's recommended findings of fact and conclusions, and shall not consider any factual testimony not previously submitted to and considered by the hearing examiner. The council may accept, reject or modify the findings, conclusions and recommendations of the hearing examiner.

Council Action

1. The council shall determine whether the employer has violated this chapter and shall by resolution determine whether to adopt all or part of the findings, conclusions and recommendations of the hearing examiner.

Imposition of costs.

1. The council may impose upon any respondent some or all of the costs of a contested hearing before an independent hearing examiner. The costs of a contested hearing include, but are not limited to, the costs of the hearing examiner, stenographic and recording costs, copying costs, city staff and attorney time for which adequate records have been kept, rental of rooms and equipment necessary for the hearing, and the cost of expert witnesses. The council may impose all or part of such costs in any given case if the position, claim or defense of the employer was

frivolous, arbitrary or capricious, made in bad faith, or made for the purpose of delay or harassment.

Remedies for Violation of ESST Ordinance

[\(Saint Paul City Ordinance §233.13\(d\)\)](#)

The Department may impose the following remedies based on the nature of the violation:

1. Reinstatement. If an employee is terminated or suspended from work for lawfully exercising their right to ESST, the Department may order Reinstatement. The employer and the employee may, with the approval of the Department, agree to any alternative resolution or remedy, such as financial compensation. Alternatives to reinstatement are not exclusive of other remedies under the Ordinance if additional violations occurred.
2. The Department may order back pay and restitution for any out-of-pocket expenses resulting from the violation of this chapter, as well as other financial remedies and fines as outlined by section 233.13 of the ordinance

Retaliation Against Employees is Prohibited

[\(Saint Paul City Ordinance §233.06\)](#)

1. Employers may not retaliate against any employee for exercising any rights under the Ordinance. Employers also may not interfere with employee rights under the Ordinance.
 - a. Such rights include, but are not limited to, the right to earn sick time pursuant to this chapter; the right to make inquiries about the rights protected under the Ordinance; the right to inform others about their rights; the right to inform the person's employer, union, or similar organization, and/or the person's legal counsel or any other person about an alleged violation; the right to file an oral or written complaint with the department or bring a civil action for an alleged violation; the right to cooperate with the department in its investigations; the right to testify in a proceeding under or related to this [Ordinance]; the right to refuse to participate in an activity that would result in a violation of city, state, or federal law; and the right to oppose any policy, practice, or act that is unlawful under the Ordinance.
 - b. Retaliation may include threats to report a person to immigration authorities.
2. Example: Maria calls in sick for 8 hours. Her employer pays her ESST but counts her absence as an unexcused absence. The employer is retaliating against Maria for using ESST. Maria's employer is in violation of the Ordinance. It shall be a rebuttable presumption of retaliation if an employer or any other person takes an adverse action against a person within ninety (90) days of the person's exercising their rights under the Ordinance. However, in the case of seasonal work that ends before the close of the 90-day period, the presumption also applies if the employer fails to

rehire a former employee at the next opportunity for working the same position. The employer may rebut the presumption with clear and convincing evidence that the adverse action was taken for a permissible purpose.

3. It is not retaliation for an employer to investigate an employee's suspected abuse of ESST (such as using ESST as vacation time rather than as sick or safe time). However, these investigations may not interfere with the employee's ability to use ESST or exercise their rights under the Ordinance.

Civil Enforcement and Private Right of Action

[\(Saint Paul City Ordinance §233.15 and §233.06\(c\)\)](#)

1. Where prompt compliance is not forthcoming with a final determination of violation, the department may refer the action to the city attorney to consider initiating a civil action against an employer for violating any requirement of this chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation.
2. A person injured by a violation of 233.06 of the Ordinance may bring a civil action in the district court to recover any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney's fees, and may receive injunctive and other equitable relief as determined by the court.
3. Employees may file a lawsuit in district court if they allege that their employer interfered with their right to use ESST. An employee or other person who has reported a violation of this chapter may:
 - a Bring a civil action in district court within forty-five (45) days after receipt of a notice of determination of no violation of this chapter.
 - b Bring a civil action in district court within forty-five (45) days upon notice that the director has reaffirmed a determination of no violation of this chapter if the complainant requested reconsideration. Notice is presumed to be five (5) days from the date of service by mail of the written notice.

New Employers Established After Ordinance Effective Date

[\(Saint Paul City Ordinance §233.21\(b\)\)](#)

All new businesses that begin operating after July 1, 2017 and before January 1, 2023, must provide at least unpaid ESST to their employees for a period of six months, after which they must provide paid ESST and comply with all provisions of the Ordinance. As of January 1, 2023, all covered employers must provide ESST and comply with all provisions of this Ordinance.

Other Leave Such As FMLA

An employee's use of ESST also may qualify for concurrent leave under federal, state or other local laws (e.g., US Family Medical Leave Act). The ESST Ordinance operates independently of any other leave such as FMLA.