

# Saint Paul ESST Frequently Asked Questions for Employees

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## General Questions about Earned Sick and Safe Time (ESST)

### *1. What does the Earned Sick and Safe Time (ESST) ordinance do?*

The Saint Paul ESST ordinance requires that employers provide earned sick and safe time to employees that work in Saint Paul. There are two components: sick time and safe time.

### *2. What is sick time? What is safe time?*

Sick time refers to paid time off that employees may use for medical reasons, such as physical illness or mental injury or other health condition, or for medical appointments to diagnose, care for, or treat such an illness, injury or health condition. Safe time refers to an absence due to domestic abuse, sexual assault, or stalking. Employees may use both sick time and safe time for their own reasons or for reasons of a family member.

### 3. Who does the ESST ordinance apply to?

The ordinance applies workers in Saint Paul working for an employer located in Saint Paul. It applies to full-time, part-time, temporary, or paid on-call employees.

### 4. When do employers have to start complying with the ESST ordinance?

Number of FT, PT, or temporary employees	ESST effective date
24 or more	July 1, 2017
23 or fewer	January 1, 2018

### 5. How do I know if I start earning ESST in July or January of 2017?

If, on July 1, 2017 your employer has 24 or more workers working inside the geographical limits of Saint Paul, you will become covered by the ESST ordinance on July 1, 2017. This includes all full time, part time, and temporary workers.

*Example #1: ABC Transmission employs 24 employees. Four of them only work six days per month. Two additional workers are employed as temporary employees. Both the part time and temporary workers are included in determining how many employees ABC Transmission employs. This company is subject to the ESST ordinance on July 1, 2017.*

*Example #2: Flowers By Irene has 183 employees working at multiple locations throughout the metro area, one of which is located in Saint Paul. Nineteen employees work at the Saint Paul location. Flowers By Irene is subject to the ESST ordinance on January 1, 2018.*

### 6. Who enforces the ESST ordinance?

The Saint Paul Department of Human Rights and Equal Employment Opportunity (HREEO) enforces the ordinance.

### 7. Where can I go to find the ESST ordinance and rules?

The ordinance and rules on ESST are available at [www.stpaul.gov/esst](http://www.stpaul.gov/esst). The full text of the ordinance is available at [Saint Paul Legislative Code Title XXIII, Chapter 233.01 - 233.21. "Public Health, Safety and Welfare"](#).

### 8. What can I use sick time for under the ESST ordinance?

You can use sick time to seek treatment, care, or accommodation of your mental or physical health condition. You can also use ESST to provide care your family member's mental or physical health condition.

### 9. What can I use safe time for under the ESST ordinance?

You can use ESST for safe time for an absence due to domestic abuse, sexual assault or stalking of yourself or your family member if the absence is used to:

- 1) seek medical attention related to physical or psychological injury
- 2) obtain services from a victim-services organization
- 3) receive counseling
- 4) seek legal advice or attend legal proceedings
- 5) for other reasons pertaining to seeking safety from an alleged perpetrator of domestic violence, sexual assault, or stalking.

You may also use safe time:

- 1) for an absence related to the closure of your or your family member's place of business by order of public official to limit exposure to an infectious agent, biological toxin, or hazardous material;
- 2) to accommodate your need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

### 10. How do I know whether my employer has to provide ESST to me?

Your employer has to provide ESST if your employer

- 1) maintains a physically permanent location in Saint Paul; AND
- 2) you work at least 80 hours or more in Saint Paul in a reporting year.

*Example #1: WeCare, Inc. is headquartered in Bloomington and owns several elderly care centers around the state, with one of them located inside Saint Paul. The Saint Paul location has 15 employees. The 15 employees located at the Saint Paul location are covered by the ESST ordinance because the employer maintains a physical presence in Saint Paul.*

*Example #2: FoodToGo, Inc. is a commercial food delivery company. They have a call center located in Saint Paul where only one employee works, and several shipping centers located throughout the metro area. Only the single employee located at the call center would earn ESST because it is the only physical location FoodToGo maintains in Saint Paul.*

*Example #3: Tasty Tacos is a national food chain. They have one location in Saint Paul that employs 15 employees. Only the Saint Paul location is subject to the ordinance.*

*Example #4: Carol's Catering is located in Woodbury and delivers food all over the metro area. Carol's truck drivers drive through the City of Saint Paul all the time. Carol's Catering is not subject to the ordinance because Carol's Catering does not maintain a permanent physical location in the City of Saint Paul.*

*11. What does “reporting year” mean for purposes of the ESST ordinance?*

“Reporting year” means any consecutive 12-month period of time determined by your employer. It includes both weekends and non-working days.

## **Who is covered by the ESST Ordinance**

*12. Am I covered under the ESST ordinance?*

Any full-time (FT), part-time (PT), temporary, or paid on-call employee that works for an employer with a physical location in Saint Paul.

*13. Do I have to live in Saint Paul in order to receive ESST?*

No, you do not have to live in Saint Paul to receive ESST. However, you have to work in Saint Paul for an employer that has a physical location inside the geographical limits of Saint Paul.

*14. I do not usually work in Saint Paul. Do I get ESST for occasional work I do in Saint Paul?*

Yes, if you work at least 80 hours of a reporting year in Saint Paul and your employer has a physical location in the City of Saint Paul.

Example: Matthew works for Williamson Architectural firm and regularly works at the firm’s Minneapolis location. He has been assigned to work on a three month project at the firm’s Saint Paul location. If Matthew works more than 80 hours in Saint Paul within a year, he will be covered by the ESST ordinance. He accrues ESST from the first day he starts working in Saint Paul.

*15. The ESST ordinance defines an employee as someone who works within the geographic boundaries of Saint Paul for at least 80 hours. However, the ordinance says that employees begin to earn ESST at the beginning of employment. How does this work?*

You must have worked in Saint Paul for at least 80 hours for the ESST ordinance to be applicable. Once you become covered by the ESST ordinance, the amount of ESST you earn is based on the total number of hours worked within the boundaries of Saint Paul since you started working for your employer.

Example: Jon has worked 40 hours per week for Marine Supplies for a total of two and a half weeks, or 100 hours. Once he exceeded 80 hours, he became covered by the ESST ordinance. Because he began accruing ESST from the first day of his employment, he has accrued three hours of ESST. (100 hours/30 = 3 hours ESST earned)

*16. I do not regularly work in Saint Paul, but have reached the 80 hour threshold this year. Do I need to reach 80 hours again next year before I can start using ESST next year?*

Yes. You have to work 80 hours in any reporting year before you can use any ESST accrued in that year. However, you will still carry over any saved hours and can use your saved hours.

*17. Do I get ESST if I work from home?*

If you work from home or telecommute, you are covered by the ordinance for the hours you work if your employer is in Saint Paul and you do your work in Saint Paul.

Example #1: *Happy Holidays Card Design has a location in Saint Paul. Bridget, an employee, telecommutes from her Saint Paul home two days a week. She earns and accrues ESST during the time she works from home.*

Example #2: *Construction Consulting Services is located in Hopkins. Mary, who lives in Saint Paul, is telecommuting from her home while her son is out of school. Because Construction Consulting Services does not have a physical presence inside Saint Paul, Mary is not covered by the ESST ordinance.*

Example #3: *Inspiring IT Services is located in Saint Paul. Damon, their employee, lives in Apple Valley and works from home 2 days per week. He does not accrue ESST on those days. Damon accrues ESST only on the days he works at the Saint Paul location.*

*18. My employer is headquartered in Saint Paul, but they have employees that work both inside and outside of Saint Paul. Are the employees that work outside of Saint Paul covered by the ESST ordinance?*

No, only the employees that work in Saint Paul.

Example: *Go Go Tires Service Co. maintains two locations: one in Maplewood and another in Saint Paul. Only the employees at the Saint Paul location are covered by the ESST ordinance.*

*19. Am I covered by the ESST ordinance if I am a temporary employee employed by a staffing agency. How are staffing agencies treated?*

If the staffing agency is located in Saint Paul, you are covered by the ESST ordinance.

Example #1: *ABC Staffing is located in Minnetonka. It has provided several temporary workers to A1 Recycling, Inc., which is located in Saint Paul. Because ABC Staffing is not located in Saint Paul, neither ABC Staffing nor A1 Recycling is subject to the ESST ordinance for these temporary workers.*

*Example #2: XYZ Staffing is located in Saint Paul. It provides eight workers to Beaver Lumber Yard, located in Crystal. The eight workers are not covered by the ESST ordinance because they are not working at a location in Saint Paul.*

*Example #3: MNO Staffing is located in Saint Paul and provides several temporary workers to Precision Engineering Corp., also located in Saint Paul. MNO Staffing is responsible to provide ESST to the temporary workers while they are working in Saint Paul.*

*20. Are independent contractors exempt from the ESST ordinance?*

Yes, independent contractors are exempt from the ordinance.

*21. How does the City define “independent contractor?”*

The City looks at whether you:

- 1) file self-employment tax returns;
- 2) maintain a separate business and use your own tools;
- 3) have a contract for performance of services with your employer;
- 4) realize a profit or suffer a loss under the contract to perform services;
- 5) incur the primary expenses relating to the work performed;
- 6) control the manner and means in which you perform work.

*22. Are unpaid interns, work study participants, and volunteers exempt from the ESST ordinance?*

Yes.

*23. Does the ordinance cover household employees like nannies, cooks, maintenance workers, and gardeners?*

Yes, if you work at least 80 hours in a reporting year and work at a home located in Saint Paul.

*24. Are undocumented employees entitled to ESST under the ordinance?*

Yes.

*25. Will the City ask about my immigration status or legal right to work?*

No.

*26. What happens if my employer transfers me to a separate entity or division outside of Saint Paul?*

You would not be covered by the ESST ordinance for hours worked outside the city limits of Saint Paul. If you are transferred back to a Saint Paul location within three years, you are entitled to previously accrued ESST. Your employer is responsible to maintain records of your ESST for a period of three years.

*Example:* Leon works for CreekPrint, a nationwide corporate-owned commercial printing provider, at their Saint Paul location. Leon has accumulated 60 hours of ESST. He transfers to the Shakopee location and works there for just under two years before transferring back to the Saint Paul location. Leon does not accrue ESST while working at the Shakopee location because it is outside the geographical limits of Saint Paul. When Leon returns to the Saint Paul location he will continue to accrue ESST from his existing 60 hours.

*27. I am a member of a union and have a collective bargaining agreement with my employer. Am I exempt from the ESST ordinance?*

No, collective bargaining agreements do not exempt employers or employees from the ESST ordinance.

*Example:* Siobhan works for Saint Paul Legal Services. She has accrued 40 hours of ESST. Her employer transfers her to Woodbury, where she continues to work for 4 years. She is then transferred back to Saint Paul. She no longer has an ESST balance, because it only remains on record for three years.

## **Prevailing Wage Exemption**

*28. I am a construction worker. How does the prevailing wage exemption apply?*

The prevailing wage exemption allows contractors to waive the requirements of the ESST ordinance for the hours they pay you the equivalent of the prevailing wage rate for your the craft or trade. The prevailing wage rate must be based on a Minnesota Department of Labor and Industry wage decision published within the last three years. If at any time you are not paid the prevailing wage rate, you start to earn and accrue ESST.

*Example #1:* Wade was hired as a carpenter for Building Proz, Inc., a Saint Paul company, on January 1 and begins working solely on a five-month-long project that requires payment of state prevailing wages. He then works on non-prevailing wage projects for three months, before again working on a four-month prevailing wage project. All projects are inside the boundaries of Saint Paul. While employed on the non-prevailing wage projects, Wade does not earn enough to meet the state prevailing wage amount. Wade will accrue ESST for the three months he was not earning the prevailing wage rate.

*Example #2:* Aaron is a tile setter for Shiny Tile, which is located in Blaine. Aaron works on both prevailing wage and non-prevailing wage projects throughout Saint Paul. Neither Aaron nor Shiny Tile is subject to the ESST law because Shiny Tile is not located in Saint Paul.

*Example #3:* Jennifer works as an electrician for Elektro Wiring Co., a Saint Paul company, and works on privately-funded projects (i.e., no official prevailing wage requirements apply) located in Saint Paul. Her hourly rate is higher than the prevailing wage rate for an electrician as listed in any Minnesota Department of Labor and Industry wage decision published within the last three years. Jennifer does not accrue ESST.

*Example #4: Abby is a Heavy Equipment Operator working on a project in Saint Paul that requires payment of federal prevailing wages. Her employer, Mega Machines, a Saint Paul company, must allow her to accrue ESST while she's on this project because it's federal prevailing wage and the federal rate for her craft, Heavy Equipment Operator, is less than the state prevailing wage rate for that craft. However, Mega Machines can elect to raise Abby's hourly rate of pay to the required state prevailing wage amount for her craft, so they would not have to provide ESST for the time Abby is at that hourly rate. NOTE: If the federal rate is equal or higher than the state rate for that craft or trade, Mega Machines would not have to provide ESST.*

*29. I'm a construction apprentice. How does the prevailing wage exemption apply to apprentices?*

If you are in a state-registered apprentice or equivalent program and are paid at least the required rate under the program, ESST requirements do not apply. If at any time you are no longer paid at the apprentice rate, you start to earn and accrue ESST.

*30. I am an employee of a new business which started after the ESST effective date. Is my employer exempt because they are a new employer?*

Yes. Until January 1, 2023, all new employers must provide unpaid ESST for the first six months after they hire their first employee. After six months, they must start providing paid ESST.

*Example: Shawna opens a greeting card store on January 1, 2018. On April 1, she hires two employees. From April 1 to September 30, she must provide her employees with unpaid ESST, based on hours worked. Beginning on October 1, she has to provide paid ESST. If an employee uses ESST hours before October 1, Shawna does not have to compensate them for the ESST hours used.*

## **What does your employer have to do under the ESST ordinance?**

*31. Are any types of employers exempt from the ESST ordinance?*

The United States Government, the State of Minnesota, and any other county or local government, including public schools, are exempt. No other types of employers are exempt.

*32. My employer has multiple locations – some are in Saint Paul, some are not. How does the ESST ordinance apply?*

ESST only applies if you work in Saint Paul for an employer that has a physical location in Saint Paul.

*33. Can my employer provide separate ESST policies for hourly and salaried employees?*

Yes, as long as all policies meet the minimum requirements of the ESST ordinance.



*34. Can my employer have a policy that frontloads paid sick and safe time at the beginning of the year?*

Yes. Your employer can provide 48 hours up front in the first year, and 80 hours each year thereafter.

*Example:* Natasha works for the veterinarian clinic Sweet Purrfection, which provided all of their employees with 48 hours of ESST in 2017. Beginning in 2018, and for each year thereafter, Sweet Purrfection provides 80 hours of ESST to every employee. Sweet Purrfection is compliant with the ESST ordinance.

*35. I'm not sure how much ESST I have accrued or how much has been used. Does my employer have to provide the answer to me if I ask?*

Yes. If you request information on how much ESST you have accrued or have used, your employer must provide within 24 hours. If you want to use ESST immediately, your employer has to provide an answer as soon as possible.

*36. Can my employer require me to telecommute or work from home instead of taking ESST?*

No, they cannot require it, but your employer can offer you the choice of working from home instead of taking ESST.

*37. Can my employer stop my ESST accrual once I reach the maximum amount I can use in a calendar year?*

Yes. In your first year of work, you may accrue up to 48 hours of ESST, at a rate of 1 hour of ESST earned per 30 hours worked. In all following years, you are allowed to accrue up to 80 hours. Once you reach these caps, your employer is not required to allow you to accrue any more ESST. However, once you dip below the cap, you must be allowed to continue accruing up to 48 hours in a given year, until you reach the 80 hour cap.

*Example:* Joanna starts working for her new employer in January. She works full time and, by summer, accrues 48 hours of ESST. At that point, her employer does not need to allow her to accrue any more time in that year. She does not use any ESST in her first year, so she carries her 48 hour ESST balance into her second year of employment. Once the second year starts, she begins to accrue ESST at a rate of 1 hour ESST per 30 hours worked. Once she reached a balance of 80 hours, her accrual pauses.

- 1) If Joanna does not use any ESST in her second year, she stays on an 80 hour balance.
- 2) If, for example, Joanna uses 5 hours in March, her balance goes down to 75 hours, and she begins accruing again until she reaches an 80 hour balance.

*38.If my employer pays overtime to her employees, can she deduct used ESST at the rate of 1.5 hours?*

No. Your employer must deduct ESST hours in hourly increments, even if used to cover overtime.

*39.Does my employer have to pay me my unused ESST when I leave my job?*

No. Your employer is not required to cash out unused ESST.

*40.Are cash-outs permitted under the ordinance?*

Yes, if you and your employer agree, unused ESST may be cashed out.

*41.If my employer believes I am sick can my employer force me to leave work and use ESST for my absence?*

It is up to your employer whether they want to require you to leave work if sick. But it is up to you whether you want to use ESST for the absence.

*Example:* Joshua works at the Snazzy Noodle, an Asian bistro. On Saturday morning Joshua came into work sneezing and coughing. His manager informs him he cannot stay at work because of his illness and sent him home. It is up to Joshua whether he wants to use ESST or unpaid time while off work, if it is consistent with the ESST ordinance and the employer's policies.

*42.Can my employer force me to use ESST for reasons other than those stated in the ordinance?*

No.

*43.I have to wait 90 days before I start using ESST. How is this calculated?*

It is calculated as 90 consecutive days, including weekends and holidays, from the beginning of their employment.

*Example #1:* Andrew started working for Max's Mechanics two days per week on March 1, 2018. Andrew can start using ESST on May 30, 2018 (after 90 consecutive days).

*Example #2:* Marsha started working for Quicky Car Service on March 1. She worked one month full time and then took off two months for maternity leave under FMLA (separate from ESST) before resuming work full time. Marsha is able to start using her ESST on June 1 because 90 consecutive days has elapsed since she began her employment.

*44. My employer's ESST policy requires me take ESST time in four hour increments. However, I have only accrued three hours of ESST. Can my employer require that I wait until I have accrued four hours before I take ESST?*

No. If you have not yet accrued four hours, your employer cannot prohibit you from using the hours you have accrued so far. If you have more than four hours of ESST accrued, your employer can require you to use ESST in increments of four hours or more.

*Example: Li works 40 hours per week for Viet Fusion restaurant. Recently, Li used up his entire ESST balance and began accruing from a balance of 0. After 60 hours of working, he has accrued 2 hours of ESST, and his child needs to go to the doctor. Li requests 2 hours of ESST, but his employer ordinarily requires a minimum of 4 ESST hours to be used at one time. Despite company policy, Viet Fusion cannot refuse Li's request.*

*45. Can my employer establish fixed times for use of ESST that coincide with regular timekeeping?*

Yes. Your employer may require that you take time off in hourly blocks that coincide with the hours of the day.

*Example: Jill has a doctor's appointment from 10:00 to 10:45 and wants to take an hour and a half off, from 9:45 to 11:15. Her employer can require that her time off coincide with the whole hourly increments. In this case, her employer can require her to take off 9:00 to 12:00, or 10:00 to 11:00, etc.*

## **Accruing ESST**

*46. When do I begin to accrue paid sick and safe time?*

You begin accruing on your first day of employment.

*47. How quickly do I earn ESST?*

You earn one hour of ESST for every 30 hours worked.

*Example: Beth works 30 hours per week at Old Time Antiques, and has worked there for ten weeks. Beth has 10 hours of ESST. (30 hours x 10 weeks = 300 hours/30 = 10 hours of ESST earned)*

*48. How many hours of ESST can I earn in a year?*

You earn one hour of ESST for every 30 hours you work. In one year, you can earn up to 48 ESST hours per year. Your employer may allow you to earn more than 48 hours in a year. Even though you are entitled to accrue only 48 hours in one year, your employer must allow you to carry over up to 80 hours from year to year. So, if you do not use your ESST in your first year, the ESST earned your first year would be added to any ESST you earn your second year and you would be able to carry up to 80 hours.

*Example: Don works full time in his first year. He accrues 48 hours of ESST and uses none. In his second year, Don again works full time and again uses no ESST. Once he hits 80 hours, his employer does not need to let him accrue more, and he can carry that 80 hour balance from year to year.*

*49. The ESST ordinance becomes effective on July 1, 2017 for employers with 24 or more employees; do those employers need to provide 48 hours of ESST in 2017?*

No. The number of ESST hours you receive is based on accrual of hours worked.

*Example: An employee working 40 hours per week from July 1, 2017 to December 31, 2017 would accrue 34 hours of ESST (40 hours \* 26 weeks = 1040 hours, 1040/30 = 34 hours ESST).*

*50. Can my employer give me more sick leave than the amount required by law?*

Yes. Your employer can provide for more generous leave.

*51. How do earned sick and safe time hours accrue for hourly employees?*

Earned sick and safe time accrues for all hours worked, including overtime. However, if your employer provides a PTO policy that is more generous than what the ordinance requires, they do not need to credit accrual during overtime hours worked by employees.

*52. How do salaried employees accrue paid sick and safe time?*

Salaried employees accrue ESST on the assumption that you work 40 hours per week. However, if you work less than 40 hours per week, ESST will accrue based on the number of actual hours worked.

*Example 1: Laurie makes a part-time, salaried employee who works 30 hours per week. After 3 weeks, Laurie would earn 3 hours of ESST. (30 hours per week x 3 weeks = 90 hours. 90 / 30 = 3 hours ESST.)*

*Example 2: Dennis is a full time salaried employee. After 3 weeks, Dennis would earn 4 hours of ESST. (40 hours per week x 3 weeks = 120 hours. 120 / 30 = 4 hours of ESST.)*

*53. Will I accrue ESST while taking paid time off on ESST?*

No. You only accrue ESST for hours worked.

*54. Is my employer required to allow me to accrue and use ESST during overtime hours I volunteered to take?*

Yes. You accrue ESST for all hours you work, and you must be able to use ESST during those hours. However, if your employer provides you a PTO policy that is more generous than what is required by the ordinance, they do not need to credit accrual during overtime hours worked by employees.

*55. I am scheduled to work from 5pm to 1am. However, if business is slow, my employer lets me leave early. Does my employer have to provide ESST for the entire eight hour shift?*

No. You only accrue ESST for the hours worked.

*Example:* Anthony is a server for CattleKing, a burger restaurant. Because business on Thursday fluctuates, Anthony comes in at 5pm to work his scheduled eight-hour shift. However, business is slow so the manager lets him off at 9pm. CattleKing only has to calculate ESST based on the four hours Anthony actually worked.

*56. As I driver I sometimes make deliveries inside Saint Paul; other times I pass through Saint Paul without stopping for more than gas or a flat tire. Which scenarios require ESST accrual?*

If you travel and make a stop as part of your job duties (e.g., to make pickups, deliveries, sales calls, etc.), you are covered by the ordinance for all hours that you perform work in Saint Paul if your employer maintains a physical location within the city limits. If you travel in Saint Paul and only make incidental stops, such as for gasoline, lunch break, changing a flat tire, etc., you are not making a stop as part of your job duties.

*Example #1:* Stan works for Trusty Auto Glass, which is located in Richfield. He drives around the metro area and replaces broken auto glass on cars. Stan will never be covered by ESST because his employer does not maintain a physical presence in Saint Paul, regardless of whether Stan works more than 80 hours inside Saint Paul in a given year.

*Example #2:* Didi works for Express Pizza, which is located in Saint Paul, as a delivery driver. Didi earns and accrues ESST while delivering pizzas. She also earns and accrues ESST when performing work-related duties, such as driving to the other end of Saint Paul to pick up more dough.

*57. Do I earn ESST during a probationary period?*

Yes.

*58. Do I keep my accrued ESST if I leave or quit my job and then return to work?*

Yes, if you are rehired within 90 days. You will also continue to accrue earned and sick time upon rehire.

*Example #1:* Sung worked for Green Thumb Gardens for many years. He currently has 20 hours of accrued ESST. He quit on June 1 and was rehired on August 15 of the same year. Sung would retain his previously accumulated 20 hours and would continue to accrue ESST and be able to use ESST immediately upon rehire.

*Example #2:* Doug worked for Spotless Cleaners in Saint Paul, but quit on March 25. He had 42 hours of accrued ESST. Doug was rehired on July 1. For purposes of ESST, Doug is treated as a new hire. Because

more than 90 days has passed, Doug does not retain his previously accrued 42 hours. Furthermore, he would have to wait 90 days before he could use the ESST he begins accruing on July 1.

*59.If the business I work for has had a change in ownership, what happens to my ESST hours from the previous owner?*

You will keep your ESST hours if you continue to work within the City of Saint Paul.

*60.My employer just got bought out. What happens to my ESST?*

You keep your ESST if you remain on the payroll when your employer is bought.

*61.What happens to unused ESST at the end of the calendar year?*

You can carry over unused ESST hours, up to 80 hours, into the next reporting year.

*62.Do ESST accrual and carry-over need to be based on a January 1 to December 31 calendar year?*

No. It can be based on a reporting year set by your employer. The City defines “reporting year” as any consecutive 12-month period of time determined by an employer.

*Example: Trusti Bread Co. uses a fiscal year to keep track of benefits in order to align with tax reporting. It lasts from April 1 to March 31. They use a program that records and tracks information. Because it is documented and is a consecutive 12-month period, it complies with the ESST ordinance.*

## **Using ESST**

*63.When am I able to start using ESST?*

You can use ESST after you have been employed for 90 days. However, you begin *earning* ESST once you begin working. Your employer must track your accrual from the very first day you work.

*64.How do I request use of ESST?*

You do need to inform your employer that you need time off, either because you are sick or for safe leave. You do not need to reference the ordinance, or say “ESST.” Your employer can request further information about need for ESST, but may not ask you to provide medically specific information.

*Example: Jane approaches her boss and requests 3 hours off because she’s sick. Her boss may inquire whether it’s for sick time or safe time and, if for sick time, whether it’s for a medical appointment, but may not ask what the medical appointment is for.*

*65.Can my employer require me to find a replacement worker when I use ESST?*

No.

*66. What is the maximum number of ESST I can use in a year?*

You are allowed to use as many hours as you have earned and carried over. There is no cap on how much you can use.

*67. If I use my ESST, how much am I paid?*

Your employer must pay you at the same hourly rate as during regular work hours.

*68. If I am paid a salary, how do I calculate my hourly rate for ESST pay?*

Divide your annual salary by the number of weeks worked per year to get your weekly salary and then divide your weekly salary by the number of hours in your normal work week.

Example: Michelle is a salaried associate for a small CPA firm in downtown Saint Paul. She earns \$75,000 annually working 52 weeks a year and generally works 40 hours per week. Michelle's rate of pay for ESST is:  $\$75,000/52 \text{ weeks} = \$1,442.00/40 \text{ hours} = \$36.05/\text{hour}$ .

*69. My pay is based on tips or commission. How much does my employer have to pay me?*

Your employer has to pay your hourly rate of pay. Your employer does not have to compensate you for lost tips and commissions.

Example: Sandy is a bartender at Moe's Bar. She earned \$8.00 per hour, plus tips. She almost always earns \$25.00 per hour in tips regardless of what day she works. Sandy calls in sick for her eight-hour Saturday shift and uses ESST. Sandy only has to be paid \$8.00 per hour, and does not have to be paid for any lost tips.

*70. If I have two jobs with different hourly rates for the same employer, what should the rate of pay be for sick or safe leave?*

You should be paid the hourly rate you would have been paid if you had worked.

Example: Adam works for National Steel. He occasionally works at the blast furnace and at other times does steel rolling. His hourly rate of pay changes depending on which unit he's working in. Adam calls in sick on a Thursday, which is when he is usually steel rolling. His hourly rate of pay while using ESST is calculated based on what he earns rolling, since that is what he would have been paid had he gone in to work.

*71. How soon must ESST be paid after it has been taken?*

ESST must be paid when you would have been paid for your scheduled hours, in accordance with your employer's payroll schedule.

*72.I was scheduled to work overtime hours but used ESST. Does my employer have to pay me an overtime rate for my ESST?*

Your employer may compensate you at your regular rate of pay for using ESST during overtime hours. Your employer is not required to pay an overtime rate for use of ESST.

*Example:* Bill is an hourly employee at Candle Supplies, Inc. His regular rate of pay is \$10.00 per hour. He often works 10 hours a day, 50 hours a week. Bill uses ESST for 5 hours at the end of his workweek, which would typically be 5 hours of overtime. Candle Supplies, Inc. only has to pay Bill \$10.00 per hour of ESST time used.

*73.I am an on-call employee, when can I use my accrued ESST?*

If you are an on-call employee and you are paid for a scheduled shift regardless of whether you actually work the shift, your employer must permit you to use of ESST. If you are paid for a scheduled shift only if you actually work the shift, your employer may permit you to use of ESST, but is not required to.

*Example #1:* Roger works on-call for Quick Assist, LLC, a metro area senior assistance service provider that has a physical location inside Saint Paul. He remains at his house until he receives a call to visit or attend to a client in his Saint Paul neighborhood. While he is on-call he must remain ready to respond to a call for assistance and is compensated for the time he waits for a call. Roger would earn and accrue ESST and be able to use ESST while on-call.

*Example #2:* Samantha works for Bountiful Banquet, a catering company located in Saint Paul. Samantha lives in Saint Paul and is on-call as a server. She is not paid during the time she is on-call. Samantha would not earn and accrue and would not be able to use ESST for the time she is on-call, unless her employer allowed it.

*74.I am suspended or on leave from work for disciplinary reasons. Can I use ESST during my suspension?*

No. Your employer does not have to provide ESST to you when you are suspended from work for disciplinary reasons.

*75.Can my employer require me to use a minimum amount of earned sick and safe time?*

Yes, but the required minimum use cannot exceed four hours. -

*Example #1:* Luther owns Best Shine Auto Detailing. He has informed his employees the smallest amount of ESST they can use is six hours. Luther is violating the ESST ordinance because the smallest increment of time cannot exceed four hours.

*Example #2:* Ramona has a regular medical checkup scheduled for 8 AM. Ramona knows she will be able to get to work by 10:00 AM, so she requests 2 hours of ESST to cover her appointment. Company policy requires that she use at least 3 hours of ESST. This is permissible because the required minimal ESST taken does not exceed 4 hours.



### *76. Can I trade shifts or work additional hours instead of using ESST?*

Yes, if you and your employer agree to do so.

### *77. If my employer has a leave sharing program (sometimes called “Vacation Donation”), am I allowed to donate their unused ESST to a company-wide, paid leave plan?*

Yes, if you and your employer agree to do so.

### *78. What can I use paid **sick** time for?*

You can use earned sick time for an absence resulting from an your own mental or physical illness, injury, or health condition; to accommodate your need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or your need for preventive medical care.

You can also use ESST to provide care for a family member for any of the same reasons.

### *79. What can I use earned **safe** time for?*

You can use ESST for safe time for an absence due to domestic abuse, sexual assault or stalking of yourself or your family member if the absence is used to:

- 1) seek medical attention related to physical or psychological injury
- 2) obtain services from a victim-services organization
- 3) receive counseling
- 4) seek legal advice or attend legal proceedings
- 5) for other reasons pertaining to seeking safety from an alleged perpetrator of domestic violence, sexual assault, or stalking.

You may also use safe time:

- 1) for an absence related to the closure of your or your family member’s place of business by order of public official to limit exposure to an infectious agent, biological toxin, or hazardous material;
- 2) to accommodate your need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

### *80. Who is considered a family member under the ESST ordinance?*

A family member can be your child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, or registered domestic partner as defined under [Saint Paul Code of Ordinances section 186.02](#), and any individual related by blood or affinity whose close association to you is the equivalent of a family relationship. For purposes of this law, “related by affinity” includes, but is not limited to, any two persons involved in a long-term relationship or two or more persons that live together and provide economic or financial support to

each other. The City will also take into consideration unique family arrangements such as multi-generational or extended family relationships when determining if affinity exists..

*81. The City defines “family member” as “any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.” What does this mean? How broad is this definition?*

The City defines “family member” broadly. The intent is to cover situations that involve non-traditional family structures. Family members may be part of a multi-generational household (grandparents, parents and children all living together). It may even include individuals, related by blood or not, that do not live under the same roof, but through cultural tradition believe they are a part of a family unit. If the City receives a complaint or is conducting an investigation, it will look at specific facts of the case. Employers are encouraged to look at each situation and make a reasonable determination about whether the employee has a family relationship. This definition would include unmarried partners.

*82. Can I use ESST to assist a roommate who is being stalked?*

Yes. Roommates count as household members under the ordinance.

*83. Can I use ESST for doctor, dentist or eye care appointments?*

Yes.

*84. Can I use ESST for health care of adult children?*

Yes.

*85. Can parents use sick leave following the birth of their child?*

Parents can use ESST after the birth of a child if it is for medical or health purposes, but not for parental care for a newborn or bonding purposes.

*86. If I get sick in the middle of a scheduled vacation, can I use sick leave?*

Your employer is not required to let you count this as sick leave because you were not scheduled to work during the vacation time.

*87. Do I need to tell my employer the medical reason for using sick leave?*

No, you do not need to provide the specific reason. However, your employer can ask if you are requesting time off for ESST.

*88. Can I work additional hours or swap shifts instead of using ESST?*

Yes, but only if agreed upon by you and your employer.

*89. Can two employees use ESST at the same time for the same reason?*

If the reason for taking ESST is covered under the ESST ordinance, then yes, two employees can take time off at the same time.

*Example: Stella and Bill work at Tool Time Manufacturing and have two kids. Both of their kids come down with the flu and must stay home from school. Stella and Bill are both allowed to take ESST to care for their children.*

## **What your employer has to do: record keeping and notice**

*90. Is my employer required to include earned sick and safe time on my pay stub?*

No, but it is suggested that they do so.

*91. How can I learn about the ESST hours I have accrued?*

You can request your balance from your employer. Your employer must provide, either electronically or in writing, information stating your current amount of ESST.

*Example: An employer could provide the employees' current amount of ESST and amount of used ESST by printing it on the employees' pay stubs or by using an electronic/online system that is accessible to all employees.*

*92. If I quit or am terminated does my employer have to pay out unused sick and safe time?*

No, your employer is not required to pay out remaining ESST to you.

*93. Do I have to provide advance notice of the leave?*

If your leave is foreseeable, such as a medical appointment, you should provide advance notice. It is not a requirement, however.

*94. Do I need to provide documentation to my employer to use my ESST?*

Only under two circumstances:

- 1) if you are out for more than three days, or
- 2) if your employer suspects misuse of earned sick and safe time.

*95.If my employer requests documentation from me after I have been out for more than three days, how much time do I have to provide it?*

Your employer must allow you to have at least 14 days to obtain documentation. In unique circumstances the City might allow deviations from 14 days. These situations are assessed on a case-by-case basis.

*96.If I have used ESST for at least 3 days and my employer requests documentation, what kind of documentation do I need to provide?*

A signed statement by a health care provider indicating sick time was necessary or some other kind of medical document that otherwise show you sought and received medical treatment is sufficient.

*97.Can my employer require documentation from more than one medical provider for each episode of ESST?*

No. Your employer can only require one form of documentation from you for each episode of ESST. However, your employer may request written documentation for each ESST absence if more than two weeks has lapsed between ESST absences. The City might allow deviations from this in unique circumstances and will analyze on a case-by-case basis.

*Example: Willis is a salesman for the Sunny Glass Manufacturing Co. He took off four days in early October due to back pain resulting from a car accident and provided the employer with a copy of the clinic's statement. Ten days later, he took an additional three days off for the same problem and then a little over a month later, in November, took two more days off. Willis does not have to provide additional medical documentation for the three days off he took in October because it occurred within two weeks of the initial clinic visit. However, his employer could require documentation for the November visit because it occurred more than two weeks from the end of his last ESST absence.*

*98.What is considered sufficient documentation I have to produce for my employer for safe time if the absence is for more than three days?*

Sufficient documentation could be a police report, court order, or your written statement that you are taking safe time, or taking time off due to sexual assault, stalking, etc. The City might allow deviations from this in unique circumstances and will analyze on a case-by-case basis.

*99.Do I have to provide notice or can my spokesperson provide the notice to my employer?*

Your representative can provide the requisite notice to your employer if you are unable to provide notice (e.g., because of a medical emergency).

## What your employer needs to do if they already provide PTO

*100. My employer has an earned sick and safe time or paid/personal time off (PTO) policy that meets or exceeds the ESST ordinance's requirements. The PTO combines earned sick and safe time and vacation time into one policy. Must my employer provide additional ESST time?*

No. If the amount of PTO provided by your employer meets or exceeds the minimum requirements of the ESST ordinance, your employer will be deemed compliant.

*Example #1: YouSearch Auto Parts provides 80 hours of "paid time off" every year. The company states it must be used for paid vacation, earned sick and safe time, and other various requests for time off, such as funerals, child care, etc. YouSearch Auto Parts' policy is compliant with the ESST ordinance because it provides the minimal amount of required ESST every year.*

*Example #2: Jiffy Printing provides 100 hours of paid vacation per year for all of their employees. Jiffy Printing does not have to provide any extra earned sick and safe time to their employees because they already provide the minimum amount of paid time off required by the ESST ordinance.*

*101. Can my employer provide a more generous leave policy to some employees and not others?*

Yes, provided that such differences in treatment do not violate the City of Saint Paul Human Rights Ordinance, the State of Minnesota Human Rights Statute, or any other laws. The ordinance merely provides a minimum standard.

*102. Does the ESST ordinance mean my employer has to pay me for an absence under the Family Medical Leave Act (FMLA)?*

No. FMLA is a Federal Law and ESST does not add to or subtract from its benefits.

*103. My employer informed me that my co-workers and I will lose our paid holidays to help the business pay for ESST. Is that allowed?*

Yes. Your employer is not required to provide paid holidays or vacation time. Holidays and vacation are optional benefits. ESST is only for earned sick and safe time that your employer must provide to you. However, your employer may not threaten to take away your holiday pay in response to your request to use ESST.

*104. Under my employer's PTO policy, can I use all of my accrued time for vacation and not leave any "cushion" for sick leave or safe leave?*

Yes. If the PTO plan meets the minimum standards required under the ordinance, your employer would not be responsible for providing additional PTO.

*Example: Paul's employer provides 80 hours of PTO throughout the year, and this PTO policy meets the minimum requirements of the ESST ordinance. Paul takes two weeks off in March to go on a trip to the Caribbean. In August, Paul becomes sick and asks to use ESST. Even though Paul used his PTO for non-ESST purposes, his employer does not need to give him any more ESST under the ordinance because he had the minimum required available at the start of the year.*

*105. My employer provides me with 80 hours of PTO every year. I used all or most of my PTO before July 1, 2017, the date the ESST ordinance becomes effective. Does my employer need to provide additional PTO/ESST for the remainder of 2017 to comply with the ESST ordinance?*

No. If your employer's existing policy provides as much or more ESST than the ordinance requires, additional ESST does not need to be provided. Your employer is not required to provide you with additional sick leave until the next calendar year.

*Example: Anytime Hauling had an existing PTO policy that allowed its employees to take up to 80 hours of paid time off every year. Waylon, an employee of Anytime Hauling, used up all of his PTO in the spring of 2017, before the ESST ordinance came into effect on July 1, 2017. Anytime Hauling does not need to provide additional PTO or ESST to Waylon.*

*106. If my employer has a PTO policy that provides 80 hours of time off or more per year and cashes out unused PTO time when I leave, does my employer have to reinstate unused PTO if I am rehired within 90 days?*

No, if the you and your employer previously agreed to this arrangement. However, you will begin to accrue ESST once you return.

*107. If my employer provides a PTO policy with coverage that is more generous than what the ESST ordinance mandates, does my employer have to separate the ESST hours from vacation hours for reporting purposes?*

No. However, if there were an investigation of an ESST complaint, your employer would have to demonstrate, by way of records, that all employees received the required amount of ESST based on hours worked.

## **What to do if your employer retaliates against you for using ESST**

*108. Can my employer punish me for using paid sick and safe time?*

No.

*109. Does the ESST ordinance protect me from retaliation if I mistakenly, but in good faith, allege a violation?*

Yes. If you believe your rights have been violated and make a complaint, but in the course of the investigation discover that your rights were not violated, your employer may not retaliate against you.

*110. What happens if my employer retaliates against me for using ESST?*

Retaliation is illegal. Your employer is prohibited from punishing or discriminating against you for asserting your rights to ESST in good faith. These rights include but are not limited to:

- 1) Requiring about ESST;
- 2) Requesting use of ESST;
- 3) Providing information to another employee about ESST;
- 4) Participating in an investigation about alleged ESST violations;
- 5) Filing a complaint with the City.

## **What to do if you feel your rights have been violated**

*111. Can I file a complaint?*

Yes. To file a complaint go to [www.stpaul.gov/ESST](http://www.stpaul.gov/ESST) or contact the City of Saint Paul Department of Human Rights & Equal Economic Opportunity (HREEO) by calling the department at 651-266-8900.

*112. How long do I have to file a complaint?*

You have one year (365 days) from the day of the alleged violation to file a complaint. If the alleged violation occurred over a period of several days, the 365 day period begins on the last day of the alleged violation.

*Example: Enrique requested ESST from October 1, 2018 – October 15, 2018, which was denied by his employer. Enrique filed a complaint with the department on October 3, 2019. Enrique can pursue his complaint because he filed his complaint within 365 days of the last day of the alleged violation.*

*113. Will HREEO keep my identity confidential?*

Yes, to the extent permitted by the investigation. HREEO will always ask you if HREEO can disclose your identity if the investigation requires it.

*114. Can my employer suspend me or terminate my employment for abusing ESST?*

Yes. When there is a clear pattern of abuse of ESST, your employer may require reasonable documentation to verify that your use of ESST is consistent with the ESST ordinance. However, your employer may not use an investigation as a reason to deny ESST unless the abuse has been proven.

*Example 1: Carl's Coffee Shop is located on the East Side of Saint Paul. Carl's employs Margaret, who has requested a full day of ESST every Friday in June, July and August, when the weather has been beautiful. Margaret has shown no indications of being sick and has provided no documentation of why she has been out, and the manager at Carl's was shown a picture from Margaret's Facebook page when she was out on ESST, showing she was at the beach with friends. Carl's initiates an investigation consistent with their company policy. Eventually, Margaret admits that she has been using ESST as vacation time, which Carl's does not provide as company policy. Carl's can take appropriate discipline against Margaret, because she abused ESST by using it for reasons not required in the ordinance, and Carl's has no policy allowing for PTO.*

*Example 2: Continuing from example 1, before Carl's concludes their investigation, Margaret again requests ESST due to her own illness for a Friday in the summertime when she hasn't appeared sick. Carl's cannot deny Margaret's request, because she is requesting the leave for a reason protected under the ordinance. However, if Carl's discovers in the course of their investigation that Margaret's most recent request was an abuse of ESST, they can include the request and abuse in the basis for Margaret's discipline.*

#### *115. How does the City determine whether I have abused my ESST?*

HREEO would investigate any complaint from you alleging you were wrongly disciplined. Your employer should be able to provide documented facts and circumstances to show that you are abusing ESST (e.g., For example, if you request to take off a Friday in order to see a football game and your employer refuses, and then you subsequently call in sick that same day; or you repeatedly call in sick on Fridays).

#### *116. Can I file a complaint if I believe I have been misclassified by my employer as an independent contractor?*

Yes. The City will research to determine if you have been improperly classified as an independent contractor. If so, your employer may be instructed to classify you as an employee and order that you be awarded ESST for the time you worked as an employee, in addition to other remedies.

#### *117. Can my employer discipline me for misusing sick leave? See 117.*

Yes, but only if you use ESST for reasons other than those included in the ESST ordinance.

#### *118. Can my employer have an absence policy that regulates and punishes me for taking unexcused absences not covered by the ordinance?*

Yes, if the policy does not interfere with your right to use ESST for the reasons in the ESST ordinance.

#### *119. I think my employer might be violating the ESST ordinance but I want to remain anonymous. What can I do?*

You can submit an anonymous complaint to the Department of Human Rights & Equal Economic Opportunity (HREEO). HREEO will begin an investigation. We will not disclose your identity. In some



cases, it may become necessary to disclose your identity in order to continue the investigation. If HREEO must disclose your identity to the employer, it will request your permission.

*120. Can I file a lawsuit in a court of law?*

Yes, if your employer retaliated against you for using your ESST or for filing a complaint, or if your employer interfered with your rights under the ESST ordinance.

*121. Can my employer ask me to waive my rights under the ESST ordinance?*

No.

*Example: Lorenzo applies for a job at Tasty Pancakes. On the application form it states: "By accepting this position you choose to forgo any paid sick and safe time." This application provision violates the ESST ordinance.*

*122. I want to know the process the City follows during an investigation. Where can I find this information?*

Go to [www.stpaul.gov/ESST](http://www.stpaul.gov/ESST).

## **Other questions**

*123. I have a question that has not been answered in this FAQ. How do I submit a question to the City?*

Submit your question to: [LaborStandards@ci.stpaul.mn.us](mailto:LaborStandards@ci.stpaul.mn.us), or call 651-266-8900, and tell the person answering that you have a question about Earned Sick and Safe Time.