

City of Saint Paul
Earned Sick and Safe Time
Task Force Recommendations
May 26, 2016

Table of Contents

Introduction	page 3
Public Input Process	page 3
Decision-making Process	page 4
Recommendations	page 4
Timeline	page 8
Appendix A	page 9
Appendix B	page 10
Appendix C	page 17

A. Introduction

On February 3, 2016 the Saint Paul City Council unanimously passed a [resolution](#) convening a task force appointed by the Mayor and approved by the Council that is representative of the city's businesses of all sizes and types, employees, organized labor, advocacy organizations and residents to engage the broader community in a conversation around the specifics of requiring employers to offer earned sick and safe time benefits to their employees. The task force was instructed to "make a determination regarding the following salient issues to be incorporated into the recommendation including:

- scope of the ordinance, such as what employers and workers are covered, the exclusion of sole proprietorships, and the treatment of independent contractors, part-time, seasonal, student, and temporary workers, and those provided by employment agencies;
- clarification on issues such as the status of employees covered by collective bargaining agreements and provisions with respect to payout of unused sick time and the portability of sick and safe time hours;
- conditions of use, such as covered events, eligible family members, and any requirements for advanced notice and documentation;
- accrual details, such as when accrual begins, accrual rate, maximum accrual, the effect of employee transfers, rehires, and employer succession, and any effect of employer size;
- how workers and employers doing business in the city will understand their rights and responsibilities under the ordinance, such as notice, posting, and community outreach; and be it
- recommendation on an enforcement mechanism

On March 2, 2016, Saint Paul Mayor Chris Coleman and the City Council appointed an ESST task force. The task force was asked to make recommendations to the Saint Paul Human Rights and Equal Economic Opportunity (HREEO) Commission, who will in turn draft a recommended ordinance with the City Attorney for the City Council as required by the resolution.

The task force began meeting on March 8, 2016, meeting nine (9) times for a total of 22.5 hours. The task force was chaired by JaPaul Harris, HREEO Commission Chair, Matt Kramer, President of the Saint Paul Area Chamber of Commerce and Rose Roach, Executive Director of the Minnesota Nurses Association. A full list of the task force members is outlined in Appendix A.

B. Public Input Process

Prior to the appointment of the ESST task force, the city sponsored four community listening sessions at various locations throughout St. Paul. In addition to the in-person listening sessions, the city provided online commentary via "Open Saint Paul". All public input, whether gathered from the listening sessions or from Open Saint Paul, was compiled and presented to the task

force members to help inform them as they discussed and debated the various components for a potential ordinance. A summary of the public input is outlined in Appendix C.

A complete list of comments is available at:

<https://www.stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/FULL%20BINDER%20FOR%20ESST.pdf>

C. Decision-making Process

The task force used a two-tier voting process in order to finalize their recommendations. An initial vote using a five-point scale of “strongly agree” to “strongly disagree” was used to identify the general thoughts of the task force and help guide the discussion. After the discussion, a second vote was taken either using the same methodology or by taking a “yes”, “no” or “abstain” vote. Votes are documented in Appendix B. Recommendations were considered “majority approved” based on the highest number of votes in one category. Meeting minutes identified these as “consensus” items meaning they were majority approved but did not have 100% agreement.

D. Recommendations

Scope of Ordinance:

1. All employees who work in the City of Saint Paul shall be covered by this ordinance. All employees who do not work in the City of Saint Paul shall not be covered. This ordinance shall cover all employers with a sufficient nexus to the City of Saint Paul as determined by the Saint Paul City Attorney.
 - a. A. All employers, regardless of size, are covered by this ordinance and are not exempted.
 - b. Family business will be treated the same as any other business.
 - c. Casual Employees are not exempted.
 - d. The city shall honor any existing state or federal exemptions.
 - e. Independent Contractors are exempt.
2. Employers and employees with policies or agreements in place (such as paid time off, PTO, or collective bargaining agreements) that meet the minimum requirements as outlined in the ordinance, would be deemed compliant.

Overview: When debating the components of “scope”, the task force considered the financial impact on small businesses while balancing the need for people to be healthy and manage safety related issues. The task force was clear, after multiple rounds of voting and discussion, that if there would be a city wide ESST ordinance, every business should be covered. The task force’s recommendation that employers “with a sufficient nexus to the City of St. Paul as determined by the St. Paul City Attorney” was based on a legal opinion the task force received from the City Attorney that a legal nexus was key to determining which employer’s would be covered by the ordinance. Possible nexus examples include whether the employer has any physical presence in St. Paul; whether employees working in St. Paul would be covered if their employer was located outside the city of St. Paul. At the same time, the task force debated what it meant to have minimum labor standards across the city and the impact that would have on business operations. For example, some employers have classified a number of employees as “casual employees” meaning they are on call and work when available. While this model is most common in the health care industry, there is no standard definition within that industry nor is the category of “casual employee” defined in employment law. The task force did not want to create new definitions and the majority voted that casual employees should accrue safe and sick time at the same rate as regularly scheduled employees. .

The task force was mindful not to over reach its authority by trying to cover employees who are covered by other laws. For example, Independent Contractors would not be covered by the ESST ordinance as federal law states they are not employees.

Accrual and Usage

Accrual:

1. Employees begin accruing ESST after eighty (80) hours worked
2. Once an employee has worked 80 hours, they begin accruing ESST at a rate of one hour earned for every 30 hours worked
3. Employees may begin using ESST 90 calendar days after employment
4. The maximum number of ESST hours an employee can earn in each year (calendar, fiscal or whatever time period the employer uses) is capped at 48 hours
5. The maximum number of hours an employee can bank is 80 hours. For example, if an employee already has 80 hours banked going into a calendar year, they cannot begin earning additional hours until they’ve used up some of their banked hours.

Usage:

1. Sick time may be used for an employee's or an employee's family member's mental or physical illness, need for medical diagnosis or preventative care
2. Safe time may be used when an employee or an employee's family member is a victim of domestic abuse, sexual assault or stalking
3. Family means a child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, foster child or adopted child and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship
4. Employers are not required to payout unused ESST upon separation from employment
5. Employees may use paid sick time in increments consistent with current business/payroll practices as defined by industry standards or existing employer policies

Overview: Determining the right amount of time to provide to employees, when an employee can begin using paid ESST and who was covered, were key elements for the task force to determine. Questions such as, "is a waiting period before use for new employees fair?" to "how do you prevent abuse of the use in hours?" needed to be decided. Providing 24 hours of ESST seemed too little based on the average number of day per year people are sick (4.3 days). However, providing 80 hours in a year was considered by some to be excessive. There was concern that people would view the additional days as bonus days and not use them in the spirit of the ordinance. Businesses wanted to protect against misuse and noted that the cost of misuse will be borne by the employer and not the employees. A number of task force members stated there is nothing being recommended that would prevent employers from implementing "safeguard" policies designed to prevent misuse or to prevent employers from disciplining employees for intentional misuse of ESST.

A number of jurisdictions followed an accrual methodology of offering ESST at the rate of one hour of ESST earned for every 30 hours worked. However, it was expressed by some task force members that for the purposes of bookkeeping, 40 hours worked were a better option. The group ultimately decided on 30 hours while providing employers with the option to use the accrual methodology or giving employees the total eligible hours at the beginning of each year (calendar, fiscal or whatever time period the employer uses).

The ordinance will need to take into consideration dynamic family relationships, which are based on various cultural norms. The task force spent a considerable amount of time discussing who would be included in the definition of family. Using the Women's Economic Security Act (WESA) definition as a baseline, the task force included a provision to take into account the various ways in which community members account for their family.

Enforcement:

1. Employers with less than 24 employees should be afforded an additional six months after the effective date of any ESST ordinance to achieve compliance
2. New startup businesses should be provided a “ramp-up” period of 3-6 months to achieve compliance; this “ramp up” period for new startup businesses shall sunset after a period to be determined by the city attorney’s office.
3. The City of Saint Paul and any designees should provide a range of employer and employee training (online, in person, posters, frequently asked questions, etc.) to help employers and employees understand, implement, report suspected violations and remain in compliance with the proposed ordinance.
4. The City of Saint Paul should require employers to notify employees of the ordinance. The city will be responsible for designing and translating communication documents to be used by the employers (such as posters in break rooms or electronic flyers) for notifying employees.
5. The task force recommends that the Mayor and City Council designate a department within the City of Saint Paul to act as the point of contact on all matters relating to the ESST ordinance
6. The task force recommends that the Mayor and City Council utilize existing processes to create an appropriate enforcement mechanism
7. The ESST ordinance should allow for a private right of action

Overview: Determining both enforcement of and education about the ESST ordinance generated a significant amount of discussion. There was agreement that both small and new businesses needed additional assistance and time to understand the implications of this ordinance as well as other applicable laws. In discussing what constituted a start-up business the task force considered (i) registration with the state in the last six months, (ii) franchise date, (iii) size of business, (iv) weekly finances and (v) date of incorporation.

It was decided, for consistency, to mirror Minneapolis’ recommendation that employers with less than 24 employees would be afforded additional time to become compliant with the law. While the ramp-up period is something that would be provided at the time the ordinance became effective, the task force recommended a new startup business ramp-up period to range between 3 and 6 months and requested the city attorney to determine the appropriate time to sunset this ramp-up period.

It was suggested that the city provide ongoing technical assistance to small businesses. While part of that function already exists within the HREEO department, the task force expressed the need to provide support on doing business in the city including code compliance, contract compliance and licensing requirements. In addition, the city should consider providing funding

to assist businesses who wish to acquire technology in order to be compliant with the ESST ordinance.

E. Timeline

The timeline following the completion of the task force's work and final recommendations is as follows:

1. **May 26** - Task force reviews, votes and submits final recommendations
2. **May 27 – June 13** HREEO compiles recommendations report for Commission, City Attorney's Office drafts ordinance
3. **June 14** - Report and ordinance released for public comment on Open Saint Paul for three weeks and sent to HREEO Commission in advance of their meeting/public hearing
4. **June 21**- HREEO Commission holds public hearing on recommendations and ordinance
5. **July 6** - Open Saint Paul closes for public comments
6. **July 13** - HREEO Department sends public comments to HREEO Commission
7. **July 19** - HREEO Commission reconvenes, final vote on ordinance
8. **August 3** - City Council First Reading
9. **August 10** - City Council Second Reading
10. **August 17** - City Council Public Hearing, testimony taken
11. **August 24** – City Council Fourth Reading

Appendix A

JaPaul Harris – HREEO Commission Chair, ESST task force Co-chair
Rose Roach – ESST task force Co-chair
Matt Kramer – ESST task force Co-chair
Autumn Amadou-Blegen
Alex Bajwa
David Burley
Ann Clowser
Steve Cohen
Hilario Deleon Perez
Eric Foster
Jim Frisco – HREEO Commissioner
JoAnn Hawkins
Robert Kasper
Farhio Khalif
Marfa Malcom
Pat Mancini
James McClean
Wintana Melekin
Tabitha Mitchell
Joanne Mullen
Ted Natus
Maureen O’Connell
Stefan Pomrenke
Lenny Russo
Erika Sanders – HREEO Commissioner
Lisa Stratton
Michelle Thom
Rick Varco
Daniel Yang

Appendix B

A. Scope of Ordinance:

1. All employees who work in the City of Saint Paul shall be covered by this ordinance. All employees who do not work in the City of Saint Paul shall not be covered. This ordinance shall cover all employers with a sufficient nexus to the City of Saint Paul as determined by the Saint Paul city attorney
 - a. Vote Results
 - i. Yes = 22
 - ii. No = 0
 - iii. Abstain = 0

2. All employers, regardless of the size of the employer in terms of numbers of employees, are covered by this ordinance and are not exempted
 - a. 1st vote if should be exempted
 - i. Yes = 10
 - ii. No = 12
 - iii. Abstain = 1
 - b. 2nd vote if should be exempted
 - i. Strongly Agree = 6
 - ii. Agree = 4
 - iii. Neutral = 2
 - iv. Disagree = 6
 - v. Strongly Disagree = 5
 - c. Final vote
 - i. Strongly Agree = 3
 - ii. Agree = 7
 - iii. Neutral = 1
 - iv. Disagree = 11
 - v. Strongly Disagree = 3
 - d. Chair ruling that the majority approved actions after 3 votes was to not exempt businesses based on size

3. Family business will be treated the same as any other business
 - a. Vote
 - i. Yes = 25
 - ii. No = 0

4. Employees with a collective bargaining agreement (CBA) are covered by this ordinance and are not exempted
 - a. 1st vote if CBAs should be exempted from the ESST ordinance
 - i. Strongly Agree = 7
 - ii. Agree = 4
 - iii. Neutral = 1
 - iv. Disagree = 1
 - v. Strongly Disagree = 6

 - b. 2nd vote if CBAs should be exempted from the ESST ordinance

- i. Yes = 7
 - ii. No = 13
 - iii. Abstain = 1

- 5. Casual Employees are not exempted
 - a. 1st vote if casual employees should be covered by the ESST ordinance
 - i. Strongly Agree = 12
 - ii. Agree = 1
 - iii. Neutral = 2
 - iv. Disagree = 0
 - v. Strongly Disagree = 5
 - b. 2nd vote – exempt casual employees by industries?
 - i. Yes = 7
 - ii. No = 12
 - iii. Abstain = 1
 - c. 3rd vote – cover casual employees in the ESST ordinance
 - i. Yes = 16
 - ii. No = 5
 - iii. Abstain = 0

- 6. Individuals with employers who are already covered by existing state or federal law that would otherwise exempt them from eligibility are not covered by any proposed Saint Paul ordinance
 - a. Vote – unanimous but no numbers recorded

- 7. Existing time off policies, such as Paid Time Off (PTO) plans, should be considered in compliance with the ordinance if they meet the minimum standards established by the City of Saint Paul
 - a. Vote
 - i. Yes = 22
 - ii. No = 0
 - iii. Abstain = 1

B. Usage:

- 1. Employees may begin using ESST 90 calendar days after employment
 - a. 1st vote
 - i. Strongly Agree = 6
 - ii. Agree = 6
 - iii. Neutral = 3
 - iv. Disagree = 4
 - v. Strongly Disagree = 1
 - b. 2nd vote
 - i. Strongly Agree = 5
 - ii. Agree = 12
 - iii. Neutral = 1
 - iv. Disagree = 2

- v. Strongly Disagree = 1
- 2. The maximum number of ESST hours an employee can earn in each year (calendar, fiscal or whatever time period the employer uses) is capped at 48 hours
 - a. 1st vote cap at 48 hours
 - i. Strongly Agree = 8
 - ii. Agree = 6
 - iii. Neutral = 2
 - iv. Disagree = 4
 - v. Strongly Disagree = 1
 - b. 2nd vote cap at 48 hours
 - i. Strongly Agree = 8
 - ii. Agree = 6
 - iii. Neutral = 3
 - iv. Disagree = 3
 - v. Strongly Disagree = 1
- 3. The maximum number of hours an employee can bank is 80 hours
 - a. Vote
 - i. 48 hours = 3
 - ii. 80 hours = 16
 - iii. Abstain = 5
 - b. Comments
 - i. The task force had a detailed conversation between “carryover” from year to year versus the “maximum bank” meaning the most an employee can accrue. Concern was expressed about “carryover” being viewed as a reward and used for things other than sick and safe time. It is also harder for accounting. On the other hand, employees may be more incentivized to take time off if they reach the “maximum bank”.
 - 1. Annual maximum carryover hours capped at 48 hours – vote did not pass
 - a. 1st vote
 - i. Strongly Agree = 3
 - ii. Agree = 0
 - iii. Neutral = 4
 - iv. Disagree = 3
 - v. Strongly Disagree = 13
 - b. 2nd vote
 - i. Strongly Agree = 7
 - ii. Agree = 3
 - iii. Neutral = 1
 - iv. Disagree = 5
 - v. Strongly Disagree = 6
- 4. Employees begin accruing ESST after one hour worked
 - a. Vote
 - i. Yes = 13
 - ii. No = 3

- iii. Abstain = 0
5. Employees begin accruing ESST at a rate of one hour earned for every 30 hours worked
- a. 1st vote
 - i. Strongly Agree = 21
 - ii. Agree = 4
 - iii. Neutral = 1
 - iv. Disagree = 1
 - v. Strongly Disagree = 0
 - b. 2nd vote
 - i. Strongly Agree = 16
 - ii. Agree = 5
 - iii. Neutral = 3
 - iv. Disagree = 1
 - v. Strongly Disagree = 0
6. Sick time may be used for an employee's or an employee's family member's mental or physical illness, need for medical diagnosis or preventative care
- a. Vote
 - i. Strongly Agree = 17
 - ii. Agree = 3
 - iii. Neutral = 0
 - iv. Disagree = 0
 - v. Strongly Disagree = 0
7. Safe time may be used when an employee or an employee's family member is a victim of domestic abuse, sexual assault or stalking
- a. Vote
 - i. Strongly Agree = 19
 - ii. Agree = 1
 - iii. Neutral = 0
 - iv. Disagree = 0
 - v. Strongly Disagree = 0
8. Family means a child, adult child, spouse, sibling, parent, mother-in-law, father-in-law, grandchild, foster child or adopted child and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship
- a. 1st vote
 - i. Strongly Agree = 14
 - ii. Agree = 2
 - iii. Neutral = 2
 - iv. Disagree = 2
 - v. Strongly Disagree = 0
 - b. 2nd vote
 - i. Strongly Agree = 7
 - ii. Agree = 4
 - iii. Neutral = 0

- iv. Disagree = 10
- v. Strongly Disagree = 0

- c. Vote
 - i. Yes = 21
 - ii. No = 2
 - iii. Abstain = 0

9. Employers are not required to payout unused ESST upon separation from employment

- a. Vote
 - i. Strongly Agree = 22
 - ii. Agree = 2
 - iii. Neutral = 0
 - iv. Disagree = 0
 - v. Strongly Disagree = 0

10. Employees may use paid sick time in increments consistent with current business / payroll practices as defined by industry standards or existing employer policies

- a. Vote
 - i. Yes = 21
 - ii. No = 0
 - iii. Abstain = 0

C. Enforcement:

1. Employers of less than 24 employees are afforded an additional six months after the effective date of any ESST ordinance to achieve compliance

- a. Vote
 - i. Yes = 25
 - ii. No = 0
 - iii. Abstain = 0

2. New startup businesses are provided a “ramp-up” period to achieve compliance

- a. Vote
 - iv. Yes = 15
 - v. No = 10
 - vi. Abstain = 0

b. Comments

- i. The ramp-up time will be between 3 – 6 months (each earning 9 and then 10 votes on the second ballot with 1 vote for 12 months). The task force was unable to achieve a majority approved vote.
- ii. There will be a sunset period where the ramp-up will no longer be offered to startup businesses. The time period for the sunset is to be determined by the city attorney’s office.
 - 1. 1st vote
 - a. Strongly Agree = 9
 - b. Agree = 3

- c. Neutral = 3
- d. Disagree = 4
- e. Strongly Disagree = 1

2. 2nd vote

- a. Yes = 12
- b. No = 8

3. The City of Saint Paul and its designee should provide a range of employer and employee training (online, in person, posters, frequently asked questions, etc.) to help employers and employees understand, implement, report suspected violations and stay in compliance with the proposed ordinance.

a. Vote

- i. Yes = 22
- ii. No = 0
- iii. Abstain = 1

4. The City of Saint Paul should require employers to notify employees of the ordinance. The city will be responsible for designing and translating communication documents to be used by the employers (such as posters in break rooms or electronic flyers) for notifying employees.

a. Vote

- i. Yes = 22
- ii. No = 0
- iii. Abstain = 1

b. Comments

- i. City needs to provide documents that outline requirements, policies and resources. Make sure these documents are provided in multiple languages.
- ii. Look beyond providing posters. Look at best practices around the US.
- iii. It is presumed that employers would communicate with employees about the ordinance either at the time of hire and / or through ongoing educational efforts

5. The task force requests that the Mayor and City Council designate a department within the City of Saint Paul to act as the point of contact on all matters relating to the ESST ordinance

a. Vote

- i. Yes = 23
- ii. No = 0
- iii. Abstain = 0

6. The task force requests that the Mayor and City Council utilize existing processes to create an appropriate enforcement mechanism

a. Vote

- i. Yes = 23
- ii. No = 0

iii. Abstain = 0

7. The ESST ordinance should allow for a private right of action

a. Vote

iv. Yes = 16

v. No = 6

vi. Abstain = 1

Appendix c

The City of Saint Paul received a great deal of input from individuals, businesses, and organizations, both through written comments submitted through the City's website and weekly community listening sessions held throughout the month of February. The following is an overview of common themes that emerged from the community engagement process:

Effects on Businesses

Some members of the business community expressed concerns that a potential policy would increase administrative burdens on businesses and that compliance would increase their costs. Administrative burdens cited included potential adverse financial impact related to the difficulty of tracking employees' hours worked in St. Paul (e.g., determining when a delivery driver is inside the city for purpose of tracking hours), the likelihood of having to hire additional administrative staff in order to track hours and the burden of finding replacement workers for employees who call in sick.

In contrast, other commenters asserted that an ESST law would have a positive effect on businesses by increasing worker productivity, and therefore increasing business profits.

Some commenters disagreed with setting a minimum standard because a "one-size-fits-all" solution could adversely affect certain sectors or businesses. Representatives of large health care employers, for example, were concerned about how an ESST law would affect their use of "casual," or on-call, workers. Others were concerned that smaller businesses, sole-proprietors, and family-run businesses might be more negatively impacted by the absence of a single worker than large businesses. Small businesses employing 2 or 3 workers at a time, for example, noted that, were one worker to call in sick, the employer's workforce would be reduced by half or a third.

ESST as a Public Health Issue

Many advocates for an ESST law cited the need for the law as a means of addressing a serious public health issue. Some submissions in favor of a proposed law expressed concern about workers in the food industry showing up to work sick. For example, one submission stated, "(an ESST law) would reduce the risk that I would get sick from a sick worker." As a corollary, a few comments noted that an ESST law that provided paid time off would reduce the economic pressure on employees in low-paid jobs to come to work sick. Some also emphasized the public benefit of workers being able to take paid time off to care for sick children, which, they pointed out, would have health benefits for society.

Lack of Current Access to ESST

Many ESST advocates, workers and their family members, and representatives from labor advocacy organizations expressed their support for an ESST ordinance as a social justice, or moral issue. For instance, one submission stated, "(an ESST law) would make me proud to live in a city that offers humane working conditions." Another comment stated, "it would make my community healthier and more just." Some submissions expressed concern for workers without a great deal of bargaining power with their employers and predicted that an ESST law would help redress that imbalance.

Consideration of Existing ESST policies

Many employers expressed frustration at what they feel is unnecessary government interference in the employer-employee relationship. Many employers stated an ESST law is unnecessary because they already provide sick time, either in the form of paid sick time, paid time off (PTO), or unpaid sick time, and that this should be sufficient. Some business owners also expressed the belief that workers would abuse city-mandated ESST.

Effects of Municipal-level ESST Policies

A few businesses owners suggested an ESST law ideally should be done on the state level, to avoid the administrative burden of compliance with a “patchwork” of different laws at the municipal level. Specifically, concern was expressed about a potential lack of uniformity with Minneapolis if there are differences in the cities’ policies. The health care industry and delivery businesses were most vocal on this topic.

A number of business owners indicated a willingness to relocate their businesses outside the city were an ESST law to come into effect. For example, one business owner stated, “I am a long time resident and business owner with one store in St. Paul currently and negotiating a second location. Any requirements of this nature would kill this deal. I’m very serious about that.”

Enforcement and Potential Retaliation

Many of the submissions and concerns focused on the need for actual enforceability, were an ESST law to be enacted, and stressed the importance of avoiding “loopholes” (e.g., the law should cover all employers, regardless of size or nature of the business). A few submissions related stories of workers who had been fired after taking time off from work due to illness, or who experienced significant financial hardship. Some commenters noted that an ESST law would allow sick workers to stay home without fearing negative consequences from their employers.