



Saint Paul Human Rights & Equal Economic Opportunity Commission

Earned Sick and Safe Time Administrative Appeal Procedures

Available online at stpaul.gov/esst

Procedures Adopted and Effective March 21, 2017



Human Rights & Equal Economic Opportunity

These procedures are adopted by the Human Rights & Equal Economic Opportunity Commission pursuant to Saint Paul Legislative Code Sections 233.01 *et seq.* to govern Earned Safe and Sick Time (ESST) appeals pursuant to Section 233.14(C)-(D) (2016).

1. Definitions

The following Definitions shall apply to these Appeal Procedures as well as the Definitions found in Saint Paul Legislative Code § 233.02.

Appellant: The employer, employee, or complainant filing the appeal to the Director Determination.

Appellee: The party responding to the appeal.

City: The City of Saint Paul, Minnesota.

Commission: The Saint Paul Human Rights & Equal Economic Opportunity (HREEO) Commission established pursuant to Section 183.19 of the Legislative Code for the City of St. Paul.

Complainant: The party alleging a violation of the Earned Safe and Sick Time (ESST) Ordinance.

Department: The Saint Paul Human Rights & Equal Economic Opportunity (HREEO) Department or any department or office that by ordinance or resolution is designated the successor to the Department.

Director: The Director of the Saint Paul Human Rights & Equal Economic Opportunity (HREEO) Department, or the Director's designee.

Director Determination: A formal written determination of a violation or no violation with findings of fact resulting from the investigation and a statement of whether Chapter 233 was violated based upon a preponderance of the evidence before the department. That determination shall constitute the City's final decision unless there is an appeal of the Director's determination of a violation or no violation is found.

Earned sick and safe time: Leave, including paid time off and other paid-leave systems, paid at the same hourly rate as an employee earns from employment that may be used for the same purposes as section 233.04, paragraph B of chapter 233.

Employee: Any person who is employed by an employer, including temporary and part-time employees, who perform work within the geographic boundaries of the city for at least eighty (80) hours in a year for that employer. For purposes of this chapter, employee does not include an independent contractor.

Employer: A person who has one or more employees. The term includes an individual, corporation, partnership, association, nonprofit organization, or a group of persons. An employer includes a person, firm, or corporation that hires temporary employees through an employment service. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be an employee of the staffing agency for all purposes of this chapter. For purposes of this chapter, employer does not include: the United States government, The State of Minnesota, any county or local government except the City of St. Paul.

Appeal Panel: Three Commissioners of HREEO selected by the Chair or the Chair's designee to hear the contested case.

Appeal Panel Determination: The decision upholding or reversing the Director Determination from the appeal by the employer, employee, or complainant.

Panel Commissioner: Each of the three Commissioners on the Appeal Panel.

Parties: The Appellant and Appellee.

Presiding Panelist: The designated Panel Commissioner responsible for setting the hearing, conducting the oral argument hearing, and ruling on procedural matters.

2. Pre-Appeal Procedures

- a. **Service of Director Determination.** If the Director finds, based upon a preponderance of the evidence that a violation or no violation of this chapter occurred, the determination must be issued to the employer and the complainant who filed the suspected violation by Certified Mail.
- b. **Determination Reconsideration.** An employer or complainant may, within 21 days of the date of the decision, file a request for reconsideration of the determination with the Director. The Director shall provide a written response to the reconsideration request within ten days. The time to appeal the Director Determination shall be stayed pending reconsideration. Failure of either party to file Request for Consideration within 21 days from the date of service of the determination renders the original determination final without any possibility of appeal by either party.
- c. **Appeal of Final Director Determination.** The employer or complainant may appeal from a determination by filing a written notice of appeal with the department within 21 days of the date of service of the Director Determination. Upon receipt of the written notice of appeal, the Department shall refer the matter to the HREEO Commission and notify the parties that further information from the Commission will be forthcoming regarding additional submissions and the oral argument.

- 1) The department shall create a notice of appeal form and statement of position and shall mail these forms with the Director Determination as well as provide the forms on the department's website.
- d. **Appeal Panel:** Upon notification of an appeal, the Chair of the Commission or a designee of the Chair shall, as soon as is practical, appoint an Appeal Panel. The Chair of the Commission, or the Chair's designee, shall create an Appeal Panel made up of three (3) Commissioners and shall appoint one of the three Commissioner's as the Presiding Panelist to hear the appeal.
- e. **Scheduling of Oral Argument:** The Presiding Panelist shall set the time and place for the oral argument. The oral argument shall be held not less than thirty (30) days after service of the Notice of Appeal.
- f. **Written Statements of Positions.** At least 10 days prior to the scheduled oral argument, the parties may file written statements of positions with the department. The department shall mail or email each submission to the parties upon receipt but no later than five (5) days before the oral argument.
- g. **Oral Argument Postponement:** The date of the oral argument may be postponed or extended by mutual agreement of the parties or if good cause is shown with the final postponement determination made by the Presiding Panelist.

3. Appeal Hearing Guidelines

- a. **Role of Presiding Panelist:** The Presiding Panelist shall conduct the oral argument hearing and shall rule on procedural matters.
- b. **Rules of Evidence:** Strict rules of evidence and procedures are not required so long as the proceedings are conducted in such a manner as to allow both sides to fairly and fully explain the circumstances.
- c. **The Record:** In addition to oral arguments, the Appeal Panel shall consider the department's record, Director Determination, and the written statements of positions by the parties involved.
- d. **Standard of Review:** The HREEO Commission shall reverse the Director Determination of a violation or no violation only upon a finding that it is clearly erroneous.
- e. **Representation by Counsel:** The parties may consult with counsel of their own choosing, at their own expense, who may present the oral argument and respond to questions posed by the Appeal Panelists.
- f. **Recording of Hearing:** The HREEO Commission shall have all proceedings of the hearing recorded. A copy of the recording may be obtained from the HREEO

Commission by making a request pursuant to the Minnesota Data Practices Act. The hearing will not be transcribed, unless the parties have arranged for a court reporter to appear at their own expense and request.

4. Order and Procedures for Appeal Hearing

- a. **Statement by Presiding Panelist:** The hearing will begin with the reading of a formal statement by the Presiding Panelist, introduction of the Appeal Panel members, and a statement of appearances noted for the record.
- b. **Appellant's Argument:** The Appellant shall have 10 minutes to present its oral argument and shall go first.
- c. **Appellee's Argument:** The Appellee shall have 10 minutes to present its oral argument and shall go second.
- d. **Testimony and Evidence:** There shall be no testimony or other new evidence presented.
- e. **Rebuttal:** Following the Appellee's argument, each party may have 5 minutes each for rebuttal.
- f. **Post-Hearing Briefs:** Once all of the arguments have been heard, the parties may request to submit written briefs or arguments to the Panel through the Department. At the discretion of the Presiding Panelist, a page limitation on written briefs and a submission date for briefing may be set.
- g. **Behavior of Parties:** Although the hearing is conducted less formally than most court procedures, the Presiding Panelist has the ability to control the conduct of the hearing, and all the parties will be expected to maintain a civil demeanor and present only relevant evidence.
- h. **Close of Hearing:** The argument record is closed at the conclusion of the hearing, unless the Presiding Panelist has allowed for a period after the hearing for the receipt of additional briefing.

5. Post-Appeal Procedures

- a. **Appeal Panel Determination:** The Appeal Panel shall make its Appeal Panel Determination within thirty (30) days of the closing of the record with the ability to extend the deadline for good cause. If the Appeal Panel is unable to issue a determination within thirty (30) days and for good cause, it shall notify the Parties in writing of the reason for not doing so but shall not extend the Panel Determination more than 15 days. The Appeal Panel Determination shall be served on the Parties by mail and distributed to each member of the Commission

for ratification by the HREEO Commission no more than 30 days from the date of the Panel Determination.

- b. **Content of Appeal Panel Determination:** The Appeal Panel Determination must contain a statement of the department's original determination; the basis for reversing or upholding the determination, and any related conclusions of law or policy.
- c. **Further Appeal.** An employer or complainant may appeal the Appeal Panel Determination to the extent provided by state law.
- d. **Civil Enforcement:** 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.
- e. **Final Order:** Upon ratification by the Commission, the Department shall serve the Commission's Determination upon the Parties by mail. The Commission's Determination shall be the City's final decision.