

# Saint Paul ESST Frequently Asked Questions for Employers

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## General Questions About the Earned Sick and Safe Time (ESST) Ordinance

### *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 to full-time, part-time, temporary, or paid on-call employees that work in the City of Saint Paul, for an employer that has a physical location in Saint Paul.

#### 4. Which employers must provide ESST?

Employers that:

- 1) Maintain a physically permanent location in Saint Paul; AND
- 2) Employ one or more individuals that work at least 80 hours or more in a reporting year in the City of Saint Paul.

*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 subject to the ESST ordinance because the employer maintains a physical location 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.*

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

It depends on the size of your business on July 1, 2017:

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

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

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

*7. When do employees begin to accrue ESST?*

Employees begin accruing ESST on their first day of employment.

*8. What is the rate of accrual for ESST?*

An employee accrues one hour of ESST for every 30 hours worked.

*Example: Beth works 26 hours per week at Old Tyme Antiques, and has worked there for seven months. Beth has 24 hours of ESST. (26 hours x 28 weeks = 728 hours/30 = 24 hours of ESST earned)*

*9. How many hours of ESST can an employee earn in a year?*

An employee earns one hour of ESST for every 30 hours they work, up to a maximum of 48 ESST hours per year. An employer may allow more than 48 hours.

*10. Do employees carry over unused ESST?*

Yes, employers must allow employees to carry over an unused balance. Employees carry over up to 80 hours from year to year, unless an employer allows the employee to carry over more.

*11. What is the maximum number of ESST hours an employee can use in a year?*

An employee is allowed to use as many hours as they have earned. Employees must be able to earn 48 hours in a year. The maximum amount of hours an employer must allow an employee to carry at a given time is 80 hours. Once an employee drops below 80 hours of accrued time, the employee starts accruing again, unless they have already accrued 48 hours in the reporting year.

*Example: Angela works 40 hours per week. She starts working on January 1, 2018. She would earn a maximum of 48 hours of ESST in her first year. If she uses 12 hours of ESST during the first year, she is able to carry over the remaining 36 hours into year two. (48 – 12 = 36) During year two she would continue earning ESST until she hit 80 hours, at which point she would stop accruing. Once she uses any ESST and falls below 80, she begins accruing again until either*

- 1) She accrues 48 hours in a year; OR*
- 2) She reaches an 80 hour balance.*

*Nothing prevents Angela’s employer from allowing her to use more ESST or accrue more ESST, but this is the minimum required.*

### *12. When is an employee able to start using ESST?*

Employees can use ESST after they have been employed for 90 days. However, employees begin *earning* ESST once they begin working. Employers should track ESST accrual from the employee's first day of work.

### *13. 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?*

If the employer chooses to use the accrual method, the number of ESST hours an employee receives will be based on accrual of hours worked. If the employer chooses to use the frontload method, they must provide 24 hours on July 1, 2017 until December 31, 2017.

*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).*

### *14. The ordinance states that employees are entitled to use ESST 90 days following commencement of their employment. What if I have employees that have been working for me for more than 90 days when the law comes into effect on July 1, 2017?*

If the employee has already been working for the employer for 90 days when the law comes into effect, they would be able to use ESST as soon as it accrues.

### *15. Who enforces the ESST ordinance?*

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

### *16. 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"](#)

## **Employee Coverage Questions**

### *17. Which employees are covered under the ESST ordinance?*

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

### *18. Does the ESST ordinance cover employees that do not regularly work in Saint Paul?*

Yes. If the employee works at least 80 hours of a reporting year in Saint Paul, and their employer has a physical location in the City of Saint Paul, that person is covered under the ordinance.

*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 inside the geographical limits of Saint Paul within a reporting year, he will be subject to the ESST ordinance. He accrues ESST from the first day he started working in Saint Paul.*

*18. 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?*

The ordinance only applies to employees who have worked within the geographical boundaries of Saint Paul for at least 80 hours in the year. Once the employee becomes subject to the ESST ordinance, the amount of ESST earned is based on the total number of hours worked within the boundaries of Saint Paul since they started working for the 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 Jon exceeded 80 hours of work within the City of Saint Paul, he became subject to 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)*

*19. An employee that does not regularly work in Saint Paul has reached the 80 hour threshold to be subject to the ESST ordinance. Does she have to re-qualify for ESST next year by working another 80 hours in Saint Paul?*

Yes. Employees subject to the ESST ordinance have to work 80 hours in any reporting year before they can use any ESST accrued in that year.

*20. How does the ordinance treat employees that work from home?*

Employees who work from home or otherwise telecommute are covered by the ordinance for the hours they telecommute if the employer maintains a physical location in Saint Paul, and the employee works in Saint Paul.

*Example #1: Happy Holidays Card Design has a brick and mortar location in Saint Paul. Bridget, an employee, works 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 works from home while her son is out of school. Because Construction Consulting Services does not have a physical location in Saint Paul, Mary is not subject to 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.*

*21. I'm an employer headquartered in Saint Paul and I 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. Both locations each employ 15 workers. Only the employees at the Saint Paul location are subject to the ESST ordinance.*

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

Yes. Any worker deemed an independent contractor is exempt from the ESST ordinance.

*23. How does the City define "independent contractor?"*

The City looks at whether the worker:

1. files self-employment tax returns;
2. maintains a separate business and use his or her own tools;
3. has a contract for performance of services with the employer;
4. realizes a profit or suffer a loss under the contract to perform services;
5. incurs the primary expenses relating to the work performed;
6. controls the manner and means in which the work is performed;

*24. I am an employer with several temporary workers. Are they subject to the ESST ordinance?*

Yes. Temporary workers are covered under the law if they perform work in Saint Paul for at least 80 hours in a reporting year, and the employer they work for maintains a physical location within Saint Paul.

*25. Are unpaid interns and volunteers covered by the ordinance?*

No they are exempt.

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

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

*27. Does an employee accrue ESST during a probationary period?*

Yes.

*28. How do hourly employees accrue ESST?*

ESST accrues at a rate of 1 hour of ESST for every 30 hours worked. This includes overtime.

*29. How do salaried employees accrue ESST?*

Salaried employees accrue ESST on the assumption that they work 40 hours per week. However, if they 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.)

*30. Do employees that leave or quit and then return to work keep their accrued ESST?*

Yes, if the employee is rehired within 90 days. The employee 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 elapsed, 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.

*31. If an employee quits or is terminated does the employer have to pay out unused sick and safe time?*

No, an employer is not required to pay out remaining accrued sick and safe time to the employee.

*32. As an employer, can I require my employee to find a replacement worker when they use ESST?*

No.

*33. Can my employee accrue ESST while taking paid time off on ESST?*

No. Employees only accrue ESST for hours worked.

*34. What is an employee's pay rate while they use of ESST?*

The employer must pay employees at their regular rate of pay.

*35. How much do I pay my employee if their wage is based on tips or commission?*

You pay the workers' hourly rate of pay. You do not have to compensate the employee for lost tips and commissions.

*Example: Sandy is a bartender at Moe's Bar. She earns \$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 shift and uses ESST. Sandy has to be paid \$8.00 per hour, and does not have to be paid for any lost tips.*

*36. If an employee's only form of compensation is commission, are they exempt from the law?*

Yes.

*37. If an employee has two jobs with different hourly rates for the same employer, what should the rate of pay be for sick or safe leave?*

The employee should earn the hourly rate they would have been paid if they had worked. (Note that this does not apply to tips or commissions.)

*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 for purposes of accruing ESST is calculated based on what he earns rolling.*

*38. I have employees that perform different duties throughout the day and their rate of pay varies based on what duty they're performing. How do I calculate their ESST?*

You can calculate the average hourly, weekly, or monthly pay based on the total number of hours and rates of pay they received.

*39. Does this ordinance apply to seasonal employees?*

Yes. If an employee returns to the workplace within 90 days of last working for the employer (seasonal layoff, for example), previously accrued ESST must be reinstated and the employee is entitled to use ESST upon rehire.



#### *40. Can I provide separate ESST policies for hourly and salaried employees?*

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

#### *41. My employee drivers sometimes make deliveries inside Saint Paul; other times they pass through Saint Paul without stopping for more than gas or a flat tire. Which scenarios require ESST accrual?*

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

*Example #1: 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.*

*Example #2: 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 subject to 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.*

#### *42. How does an employer compensate hourly employees who use ESST for hours that would have been overtime?*

Employers may compensate their employees at their regular rate of pay for use of ESST for overtime hours. Employers are 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 earns time-and-a-half (\$15/hour) for the last 10 hours he works during the 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, not at \$15.00/hour.*

#### *43. When can on-call employees use their accrued ESST?*

If an on-call employee is paid for a scheduled shift regardless of whether he actually works the shift, the employer must permit use of ESST while on call. If an on-call employee is paid for a scheduled shift only if she actually works the shift, the employer may permit use of ESST, but is not required to do so. The employer must have a physical presence in Saint Paul, and the employee must be physically located inside Saint Paul.

*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.

#### *44. How do I calculate the hourly rate for ESST pay for my salaried employees?*

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

Example 1: 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:  $\$75,000/52 \text{ weeks} = \$1,442.00/40 \text{ hours} = \$36.05/\text{hour}$ .

Example 2: Jules is a part time salaried employee working in Saint Paul. He makes \$60,000 per year, working 30 hours per week. Jules' rate of pay for ESST is:  $\$60,000/52 \text{ weeks} = \$1,153.85/30 \text{ hours} = \$38.46/\text{hour}$ .

#### *45. Does an employee have to live in Saint Paul in order to receive ESST?*

No, an employee does not have to live in Saint Paul to receive ESST. However, they have to work in Saint Paul for 80 or more hours per year, and for an employer that has a physical location inside the geographical limits of Saint Paul.

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

Yes.

#### *47. Does HREEO ask about an employee's immigration status or legal right to work?*

No.

#### *48. How much ESST must an employer provide to their employees between July 1 and December 31, 2017?*

Under the accrual method, employees must earn one hour of ESST for every 30 hours worked. Under the frontloading method, the employee would receive 24 hours.

Example: Under the accrual method, an employee worked 40 hours per week from July 1, 2016 to December 31, 2016. The amount of ESST is 34 hours.  $(40 \text{ hours} * 26 \text{ weeks} = 1040 \text{ hours}, 1040/30 = 34$

hours ESST). Under the frontload method, the employee would receive 24 hours between July 1 and December 31. On January 1, any unused hours would be lost and they would immediately receive 80 hours for the new year.

*49. If my employee asks how much ESST they have accrued or used, do I have to provide the answer to the request?*

Yes. If an employee requests information about how much ESST they have earned, including total balance, amount accrued, and amount used, the employer must provide an answer in writing or electronically within 24 hours. If the employee wants to use ESST immediately, the employer has to provide an answer as soon as possible.

## **What do I have to provide to my employees under the ESST ordinance?**

*50. 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 are exempt, including public schools. No other types of employers are exempt.

*51. When is the ESST ordinance effective for my business?*

<b>Number of FT, PT, or temporary employees on July 1, 2016</b>	<b>ESST effective date</b>
<b>24 or more</b>	July 1, 2017
<b>23 or fewer</b>	January 1, 2018

*52. How does the City measure the size of the employer for purposes of determining when the employer becomes subject to the ESST ordinance?*

The City looks at the total number of full-time, part-time, temporary, or paid on-call employees the employer has in Saint Paul.

*53. Are nonprofit organizations exempt?*

No, the ordinance does not exempt non-profit organizations.

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

ESST only applies to employees working in Saint Paul for an employer that has a physical location in Saint Paul.

*55. Does an employer have to complete any paperwork or otherwise submit anything to be compliant with the ESST ordinance?*

No, employers do not have to provide anything to the City. If a complaint is made, the City has the right to request and receive documentation from the employer that shows:

1. hours worked by the employee
2. accrual of earned sick and safe time
3. use of earned sick and safe time

#### *56. How long do I have to retain ESST records?*

At least three years.

#### *57. How are staffing agencies treated?*

Temporary employees working for a staffing agency are regarded as employees of the staffing agency. The staffing agency must be located in Saint Paul for its workers to be subject to 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 subject to 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.*

#### *58. What happens if an employer transfers an employee to a separate entity or division outside of Saint Paul?*

The employee would not be covered by the ESST ordinance for hours worked outside the city limits of Saint Paul. If that employee is transferred back to a Saint Paul location within three years, the employee is entitled to previously accrued ESST. The employer is responsible to maintain records of the employee's 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.*

*Example: Sarah 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.*

#### *59. Can I frontload ESST at the beginning of the year for my employees?*

Yes. An 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, which is available to use immediately. Sweet Purrfection is compliant with the ESST ordinance. NOTE: Sweet Purrfection could also provide 48 hours of ESST from July 1, 2017 to June 30, 2018, and then provide 80 hours for each reporting year thereafter (reporting year beginning July 1).*

*60. Some of my employees are scheduled to work from 5pm to 1am. However, if business is slow, I let one or more employees leave early. Do I have to provide ESST for the entire eight hour shift?*

No. Employees 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.*

*61. I had an employee scheduled from 5 pm to 1 am. They called in sick and used ESST. Business was slow that night, and I would have sent my employee home at 9 pm. Do I need to provide them ESST for their full shift?*

Yes, you need to allow them to use ESST for their full scheduled shift.

*62. Can I provide my employees more sick leave than the amount required by law?*

Yes. Employers can provide for more generous leave.

*63. One of my employees quit. What do I do with their unused ESST?*

Retain the employee's records for a minimum of three years. The worker is entitled to reinstatement of their ESST if rehired within 90 days. You are not required to pay out your employee's unused ESST.

*64. My employees and I have a collective bargaining agreement (CBA) with a union. Are they exempt from the ESST ordinance?*

No.

*65. What happens if my business buys out, or otherwise succeeds,*

*another business?*

All employees of the original employer who remain employed by the successor employer retain ESST. The new employer is responsible for ensuring that all the employees' existing hours worked, accrued ESST, and used ESST is sufficiently documented and goes back three years.

*66. Where can I go to see the ordinance and the rules regarding ESST?*

[Saint Paul Legislative Code Title XXIII, Chapter 233.01 - 233.21.](#) "Public Health, Safety and Welfare"

Rules regarding ESST: [www.stpaul.gov/esst](http://www.stpaul.gov/esst).

*67. As an employer, am I required to allow my employees to accrue and use ESST during overtime hours they volunteered to take?*

Yes. Employees accrue ESST for all hours they work, and must be able to use ESST during hours they were scheduled to work, whether or not they volunteered for a particular shift.

*68. As an employer, do I have to allow an employee the option of using ESST while they're suspended or on leave from work for disciplinary reasons?*

No. An employer does not have to provide ESST to an employee when that employee is suspended from work for disciplinary reasons.

*69. I'm a sole proprietor business; I do not have any employees. Am I subject to this law?*

No, this law only applies to employees of a company, not the company owner.

*70. I am a construction contractor. 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 their construction workers the equivalent of the prevailing wage rate for the craft or trade of the worker. The prevailing wage rate must be based on the applicable Minnesota Department of Labor and Industry wage decision published within the last three years. If at any time an employee is not paid the prevailing wage rate, the employee starts to earn and accrue ESST.

*Example #1: 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 #2: 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, after which he works on non-prevailing wage projects for three months before again working on a four-*

month state 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 earn and accrue ESST for the three months he was not earning the prevailing wage rate.

*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.

### *71. I'm a construction contractor. How does the prevailing wage exemption apply to apprentices?*

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

### *72. I am starting up a new business and will be hiring employees shortly. Are there any exemptions for new employers?*

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 pass, you 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.

## **Using ESST**

### *73. What can an employee use sick time for?*

An employee can use earned sick time for an absence resulting from an employee's own mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an

employee's need for preventive medical care.

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

#### *74. What can an employee use safe time for?*

An employee can use ESST for an absence due to domestic abuse, sexual assault or stalking of the employee or employee's 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, or;
- 5) for other reasons pertaining to seeking safety from an alleged perpetrator of domestic violence, sexual assault, or stalking.

Employees may also use safe time

- 1) for an absence related to the closure of employee's or employee 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 the employee's 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.

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

A family member can be an employee's 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 with the employee is the equivalent of a family relationship. For purposes of ESST, "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 also considers family arrangements such as multi-generational or extended family relationships when determining if an affinity relationship exists.

#### *76. 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 and how expansive 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 and roommates.

*77. Can an employee use ESST for doctor, dentist or eye care appointments?*

Yes.

*78. Can employees use ESST for health care of adult children?*

Yes.

*79. 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. The Family Medical Leave Act (FMLA) does permit unpaid leave for bonding purposes.

*80. Can an employer require an employee to use a minimum amount of earned sick and safe time?*

Yes, employers can require an employee to use a minimum amount of ESST per request. However, it cannot exceed four hour increments.

*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.*

*81. If an employee gets sick in the middle of a scheduled vacation, can the employee use sick leave?*

No. The employee cannot claim this time as sick leave because the employee was not scheduled to work during the vacation time.

*82. Can an employee work additional hours or swap shifts instead of using sick leave?*

Yes, but only if agreed upon by both employer and the employee. The employer cannot require the employee to swap shifts.

*83. Can an employer require an employee to telecommute or work from home instead of taking paid sick and safe time?*

No, but the employer can offer the employee the choice of working from home instead of taking ESST.

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

ESST must be paid when an employer would have paid employees for their scheduled hours, in accordance with the employer's payroll schedule.

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

No. The City defines "reporting year" as any consecutive 12-month period of time determined by an employer.

*Example: Trusti Bread Co. utilizes a fiscal year when computing benefits accumulation in order to coincide 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.*

*86. If I pay overtime to my employees, can I deduct used ESST for scheduled overtime at the rate of 1.5 hours?*

No. ESST hours are deducted in hourly increments, even if used to cover overtime.

*87. If an employer has a leave sharing program (sometimes called "Vacation Donation"), are employees allowed to donate their unused ESST to a company-wide, paid leave plan?*

Yes, if the employee and employer agree to do so.

*88. Can an employee trade shifts or work additional hours instead of using ESST?*

Yes, if the employer and employee agree to do so. Employers cannot require an employee to trade shifts.

*89. Is cash-out required when employees leave their job?*

No. Employers are not required to cash out unused ESST upon an employee's termination or separation of employment.

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

If the employer and employee agree, unused ESST may be cashed out if the employee receives ESST under the frontload method. If the employee receives ESST under the accrual method, the employer may not cash out unused ESST.

*91. If an employer feels one of their employees is sick can the employer force the employee to leave work and use ESST for their absence?*

It is up to the employer whether they want to require an employee to leave work if sick. But it is up to the employee whether they 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.*

*92. Can an employer force an employee to use ESST for reasons other than those stated in the ordinance?*

No.

*93. An employee must wait 90 days before they 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 three months for maternity leave 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.*

*94. My ESST policy mandates that employees must take ESST time in four hour increments. However, I have an employee that has only accrued three hours of ESST. Can I require that the employee wait until they have accrued four hours before they take ESST?*

No. If the employee has not yet accrued four hours, you cannot prohibit the employee from using the hours they have accrued.

*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.*

*95. If I front load my employees' hours but, after being employed for 90 days, the employee takes ESST and then quits, can I recoup those paid hours the employee hadn't earned yet by subtracting it from their paycheck?*

No, under the ESST ordinance, an employer could not recoup ESST used by the employee. The

ordinance allows for an employer to satisfy the ESST ordinance by either using the accrual method of 1 hour of ESST per 30 hours worked, or simplifying by providing 80 hours up front. Both methods are acceptable. Neither method allows an employer to recoup lost ESST. *Example: Morley receives 80 hours of ESST up front at the beginning of the 2019. After being employed for 90 days, he takes 80 hours of ESST after getting injured in an accident. He returns to work for 30 hours and then quits. His employer may not recoup any of the ESST taken.*

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

Yes, if the reason for the absence is covered under the ESST ordinance.

*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.*

*97. How much does an employer have to pay an employee for ESST?*

The employee has to be paid at their regular rate of pay.

*98. Can I stop my employees' ESST accrual once they reach the maximum amount they can use in a calendar year?*

Yes. In their first year, the employee must be allowed to accrue up to 48 hours of ESST, at a rate of 1 hour of ESST earned per 30 hours worked. In all subsequent years, the employee must be allowed to accrue up to 80 hour. Once the employee has reached these caps, they need not accrue any more ESST. However, once they dip below the cap, they must be allowed to continue accruing up to 48 hours in a given year, until they reach the 80-hour cap.

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

Yes. An employer may insist an employee 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.*

## **Employer Notice and Records Requirements**

*100. Are employers required to give employees notice of their right to sick leave?*

Yes. Employers must provide notice to employees that they are entitled to ESST. There are multiple ways an employer can provide notice. For example, the employer can put up an ESST poster provided by the City, or the employer can create their own notice if it contains the required information.

*101. How can an employer provide sufficient notice of ESST to employees?*

An employer can post the city-provided poster, or one of an employer's creation, in a conspicuous place where all employees are likely to see it.

*102. Where can I find the poster?*

At the city website: [www.stpaul.gov/ESST](http://www.stpaul.gov/ESST)

*103. If an employer elects to create their own notice, what provisions must it contain?*

The employer's notice must contain the following information:

1. That employees are entitled to ESST;
2. When accrual starts;
3. When an employee may begin using ESST;
4. The rate at which an employee accrues ESST;
5. The maximum number of hours an employee may accrue and use in a calendar year;
6. The employer's notice requirements for using ESST;
7. That the employee can file a complaint with the City of Saint Paul Department of Human Rights & Equal Economic Opportunity;
8. That employer retaliation is prohibited.

*104. Do I need to include the ESST notice in my company's employee handbook?*

Yes. Employers can incorporate the information in the poster into their handbook and it would be considered sufficient notice under the law.

*105. What records does an employer have to keep?*

The employer has to keep records of the following for three years:

1. Accrued ESST time;
2. Used ESST time;
3. Employee hours worked in Saint Paul.

*106. May an employer stop maintaining records after an employee has earned 48 hours within a reporting year?*

The employer must maintain sufficient records such that, were an investigation to occur, the employer would be able to demonstrate (1) the employee accrued 1 hour of ESST for every 30 hours worked; (2) how many hours the employee worked in Saint Paul, and; (3) how much ESST the employee has used to date.

*107. If I frontload my employees' ESST by meeting the minimal requirements of providing 48 hours in the first year and 80 hours thereafter, do I still have to maintain records of actual hours worked?*

No. However, the employer must maintain sufficient records such that, were an investigation to occur, the employer would be able to demonstrate (1) the employee received 80 hours at the beginning of the reporting year; (2) How many hours the employee worked in St. Paul, and; (3) How much ESST the employee has used to date.

*108. Do I need to include earned sick and safe time on my employees' wage statement?*

No, it is not required. Employers can elect to do so.

*109. Can I maintain electronic records of employee ESST?*

Yes, if it contains all required information and is accessible to all employees.

*110. I am a new employer in Saint Paul. I bought an existing business that was providing ESST to their employees. What do I have to do to comply with the ESST ordinance?*

The employees of your newly-acquired business will retain their ESST hours if the employees continue to work within the City of Saint Paul. In addition, you must provide all employees, whether existing or new, with the employer's written ESST policies at the time of sale or acquisition, or as soon as practicable, which shall include a policy that complies with this section.

*111. Does an employer that has a PTO policy that provides for at least 80 hours of paid time off every year still have to retain records for three years?*

Yes. All employers must retain records of accrued and used ESST for a minimum of three years regardless of their ESST or PTO policy.

*112. How should I track hours of employees that only occasionally work in Saint Paul?*

The employer is ultimately responsible for tracking ESST for their workers and ensuring that it is documented appropriately. However, the employer may delegate the responsibility to employees and may also develop written policies that specify standard time estimates for trips between regularly traveled routes.

## **Employee Notice and Records Requirements**

*113. May I require an employee to disclose the medical reason for using sick leave?*

No.

*114. Does my employee need to provide documentation to me to use my earned sick and safe time?*

Only under two circumstances:

1. If they are out for more than three days, or
2. If you suspect misuse of earned sick and safe time.

*115. How does an employee request use of ESST?*

An employee has to inform their employer that they need to use ESST. The employee does not have to explicitly reference the ordinance, or say “ESST.” The employer may request further information as to the need for ESST, but may not ask the employee 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.

*116. Can the employer require that the employee’s request be in writing?*

The employer can require written documentation of the request so long as it does not interfere with an employee’s right to use ESST.

*Example 1:* Troy has a doctor’s appointment next week. Troy’s employer, Capital Crushers, has a general policy requiring that time off requests be made in writing. They can request a written record of Troy’s request to use ESST.

*Example 2:* Anne becomes sick and calls in to use ESST. Her employer has a general policy requiring that time off requests be made in writing, and generally does not grant requests for time off unless the request is in writing. Anne’s employer cannot enforce this policy against Anne for purposes of ESST use, because doing so would interfere with Anne’s right to use sick time under the ordinance.

*117. If my employee has used ESST for at least 3 days, and I request documentation, what kind of documentation do they 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 shows the employee sought and received medical treatment is sufficient.

*118. Can I require documentation from more than one medical provider for each episode of ESST?*

No. An employer can only require one form of documentation from the employee for each episode of ESST. However, an employer may request written documentation for each ESST absence if more than two weeks has lapsed between ESST absences.

*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.

*119. What is considered sufficient documentation an employee has to produce to the employer for safe time if the absence is for more than three days?*

Sufficient documentation could be a police report, court order, or an employee's written statement that they are taking safe time, or taking time off due to sexual assault, stalking, etc.

*120. Does the employee have to provide notice, or can a spokesperson for the employee provide the notice to the employer?*

A representative of the employee can provide the requisite notice to the employer if the employee is unable to provide notice (for example, because of a medical emergency).

*121. If an employer requests documentation from an employee that has been out for more than three days, how much time does the employee have to provide it?*

The employer must allow the employee at least 14 days to obtain documentation.

## **PTO Policies and the ESST Ordinance**

*122. An employer has a 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 the employer provide additional ESST time?*

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

*Example #1:* YouSearch Auto Parts provides 80 hours of "paid time off" every year. The company states it may 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.*

*Example #3: Dora's Dance Studio provides 80 hours of vacation time every year, but requires that employees provide a two week notice to use the vacation time. For this policy to be compliant with the ESST ordinance, Dora's would need to amend their policy to allow employees to use ESST for medical or safety reasons, even if their employees are unable to provide the two week notice.*

*123. Can an 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 ESST ordinance merely provides a minimum standard.

*124. Does the ESST ordinance mean I have to pay an employee for an absence under the Family Medical Leave Act (FMLA)?*

No. FMLA does not provide for paid sick leave or ESST.

*125. If I need to take away paid company holidays or vacation to pay for ESST, is that allowed?*

Yes. Employers are 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 employers must provide to their employees. However, employers may not threaten to take away holiday pay in response to an employee's request to use ESST.

*126. Under my PTO policy, can employees use all of their 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, the employer would not be responsible for providing additional PTO.

*127. If I provide my employees with 80 hours of ESST or PTO every year, do I need to track my employees' hours?*

No. However, if the City receives a complaint and initiates an investigation, the employer must provide sufficient records to show that the employee received ESST.

*128. I provide my employees with 80 hours of PTO every year. Some of my employees used all or most of their PTO before July 1, 2017, the date the ESST ordinance becomes effective. Do I need to provide additional PTO/ESST for the remainder of 2017 to comply with the ESST ordinance?*

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

*Example #1: Jill works for Twisty River Brewers. Twisty River Brewers provides all of their employees with 80 hours of paid time off (PTO) every year. Jill used 70 hours of PTO for vacation in May of 2017. Twisty River Brewers already complies with the ESST ordinance and does not have to provide additional PTO or ESST in 2017.*

*Example #2: 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 in 2017.*

*129. If I have a PTO policy that provides 80 hours of time off or more per year and cashes out unused PTO time when an employee leaves, do I have to reinstate unused PTO if the employee is rehired within 90 days?*

No, if you and your employee had previously agreed to this arrangement. However, the employee would continue to accrue ESST once he or she returned.

*130. If I provide a PTO policy with coverage that is more generous than what is mandated in the ESST ordinance, do I have to separate the earned sick and safe hours from vacation hours for reporting purposes?*

No. However, if there were an investigation, you would have to demonstrate that all employees received the required amount of ESST based on hours worked.

## **Enforcement**

*131. Can employees file a complaint?*

Yes, your employees can file a complaint at [www.stpaul.gov/esst](http://www.stpaul.gov/esst) or by contacting the City of Saint Paul Department of Human Rights & Equal Economic Opportunity by calling the department at 651-266-8900.

*132. How long does an employee have to file a complaint?*

Employees have 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.*

### *133. Will HREEO keep the employee's identity confidential?*

Yes, to the extent permitted by the investigation. HREEO will always ask the employee if the City can disclose their identity if the investigation requires it.

### *134. Can employers discipline employees who abuse ESST?*

Yes. When there is a clear and articulable pattern of abuse of ESST by the employee, the employer may require reasonable documentation to verify that an employee's use of ESST is consistent with the ESST ordinance, regardless of whether the employee has used ESST for more than three consecutive days. However, employers 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.*

### *135. How does the City define "clear and articulable pattern of abuse?"*

An employer should be able to provide facts and document circumstances to show that an employee is abusing ESST.

*Example: Maria requests to take off three Fridays in December in order to go to the hometown basketball games. Due to staffing, she is refused the time off. Maria subsequently calls in sick those same three Fridays. Her boss records all of this and is able to demonstrate a clear and articulable pattern of abuse.*

### *136. Can an employee file a complaint if they believe they have been misclassified by their employer as an independent contractor?*

Yes. If an employee has been improperly classified as an independent contractor, the City may require

the employer to classify them as an employee and order accrual of ESST for the time they worked as an employee.

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

The City looks at whether the employee:

- 1) files self-employment tax returns;
- 2) maintains a separate business and use your own tools;
- 3) has a contract for performance of services with your employer;
- 4) realizes a profit or suffers a loss under the contract to perform services;
- 5) incurs the primary expenses relating to the work performed;
- 6) controls the manner and means in which you perform work.

*138. Can I discipline an employee who misuses sick leave?*

Yes, but only if an employee uses ESST for reasons other than those included in the ESST ordinance.

*139. Are there consequences if I do not respond to an investigation?*

Yes. An employer that does not respond to requests for records within a reasonable time creates a rebuttable presumption that the employer has violated the ordinance, and the employer may not be able to use those records in an appeal.

*140. Can the City conduct ESST investigations on its own initiative?*

Yes. If the City suspects an employer is violating the ESST ordinance, it may initiate an investigation.

*141. Can an employer have an absence policy that regulates and punishes employees for taking unexcused absences not covered by the ordinance?*

Yes, provided the policy does not interfere with an employer’s right to use ESST for the reasons in the ESST ordinance.

*142. Can my employee file a lawsuit in a court of law?*

Yes, if your employee alleges that you retaliated against them for using your ESST or for filing a complaint, or if you interfered with your employee’s rights under the ESST ordinance.

*143. Can I ask employees to waive their rights under the ESST ordinance?*

No.

*Example: Lorenzo applies for a job at TastyPancakes. On the application form it states: “By accepting this position you choose to forgo any paid sick and safe time.” This application provision is in violation of the ESST ordinance.*

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

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

## **Retaliation**

*145. Can I discipline an employee for using ESST?*

No, unless your employee abused it.

*146. Does the ESST ordinance protect an employee from retaliation if the employee mistakenly, but in good faith, alleges a violation?*

Yes.

*147. What happens if I retaliate against an employee for use of ESST?*

Retaliation is illegal. Employers are prohibited from punishing or discriminating against employees who assert their rights to ESST in good faith. These rights include but are not limited to:

1. An employee inquiring about ESST;
2. An employee 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.

## **Questions?**

*148. I have a question that has not been addressed 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). You can also call 651-266-8900 and tell the person answering that you have a question on Earned Sick and Safe Time.