

# City of Saint Paul

## Administrative Rules for the Earned Sick and Safe Time (ESST) Ordinance, Chapter 233

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### Contents

1. Purpose of the ESST Ordinance Rules .....	1
2. Definitions .....	2
3. Accrual of ESST .....	3
4. Use of ESST.....	7
5. Confidentiality and Nondisclosure .....	12
6. Exercise of Rights: Retaliation Prohibited .....	12
7. Notice and Posting .....	13
8. Required Statement to Employee.....	14
9. Employer Records.....	15
10. Separation.....	16
11. Employer Succession .....	16
12. Implementation .....	16
13. Investigation and Enforcement .....	17
14. Civil Enforcement.....	19

## 1. Purpose of the ESST Ordinance Rules

1.1 These Rules govern the practices of the Department of Human Rights & Equal Economic Opportunity (“HREEO” or “Department”) in administering the provisions of the City of Saint Paul’s Earned Sick and Safe Time (ESST) Ordinance, [Chapter 233](#) of the City of Saint Paul Legislative Code (“Ordinance” or “Chapter”). These Rules have been promulgated pursuant to the authority listed at Saint Paul Legislative Code §§ 233.12 and 233.13.

1.2 Nothing in these rules shall be interpreted or enforced in a way that conflicts with the Federal or State of Minnesota Fair Labor Standards Acts.

1.3 *Severability.* These Rules are independent and severable. If any part of these Rules is found to violate any law or found to be invalid or in conflict with the Ordinance, such finding must be limited as narrowly as possible, and all other parts of these Rules must be considered valid and in effect.

1.4 *Liberal construction of rights, narrow construction of exemptions.* Under Saint Paul Legislative Code § 233, the purpose of the Ordinance is to promote the general welfare of the people the City, and the Department has the authority to investigate possible Ordinance violations. Accordingly, these Rules will be liberally construed, with any exceptions or exemptions narrowly construed.

## 2. Definitions

These Rules incorporate all definitions codified in the Ordinance and use the following defined terms:

2.1 “ESST” means earned sick and safe time.

2.2 “ESST poster” means the standard Workplace Notice Poster created by Department as described at section 233.07(c) of the Code.

2.3 “Frontloading” is defined as an alternative method of providing ESST hours to Employees. In these cases, an Employer gives Employees the maximum number of hours allowed to accrue in a Year at the beginning of the Year for immediate use.

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

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

2.6 “PTO” means Paid Time Off or equivalent paid-leave policy.

2.7 “Start of Employment” means the day employment activities begin. For example, the “start of employment” can include, but is not limited to, the Employee’s first day of training or performing job duties.

### **3. Accrual of ESST**

#### **General Rules about Covered Employees**

3.1 All Employees, whether full-time, part-time, temporary, or some other designation, who perform work within the geographic boundaries of the City and are anticipated by their Employer to work 80 hours in a Year are covered by the Ordinance. (See Saint Paul, Minnesota, Municipal Ordinance §233.02 definition of *Employee*.)

3.2 Unless specified in an agreement between an Employee and an Employer, time spent traveling to work before an Employee’s shift has started and traveling home after an Employee’s shift has ended are not covered by this Ordinance. (See Federal Fair Labor Standards Act.)

3.3 Employees working from home (or otherwise telecommuting) are covered by the Ordinance if the Employee is working within the geographic boundaries of the City. (See Saint Paul, Minnesota, Municipal Ordinance §233.02 definition of *Employee*.)

3.4 Employees are not covered by the Ordinance for hours worked outside the geographic boundaries of the City. (See Saint Paul, Minnesota, Municipal Ordinance §233.02 definition of *Employee*.)

3.5 Employees who travel through the City and only make incidental stops, such as for gasoline, or changing a flat tire, are not making a stop as a purpose of their work.

3.6 Independent Contractors are not covered by the Ordinance. Individuals can sometimes be incorrectly classified as Independent Contractors instead of as Employees. It is the Employer’s responsibility to classify their workers correctly. Federal and State guidance can help determine whether a worker is an Independent Contractor or an Employee. An Employer or Employee can access the Independent Contractors test under the Federal Wages and the Fair Labor Standards Act. (See Minnesota Rules, Chapter 5224, Minn. Statutes §§ 181.723 and 176.043, and Saint Paul, Minnesota, Municipal Ordinance §233.02 definition of *Employee*.)

<https://www.dol.gov/agencies/whd/flsa/misclassification>

<https://www.dli.mn.gov/misclassification>

3.7 An Employee supplied by a staffing agency is an Employee of the staffing agency for purposes of the Ordinance unless there is a contractual agreement stating otherwise. All Employees supplied by a staffing agency located outside the City are entitled to ESST if they work within the boundaries of the City for at least 80 hours in a Year.

#### General Rules about Accrual

3.8 Employees begin accruing ESST at the Start of Employment. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(a).)

3.9 Per the accrual method, Employees accrue one (1) hour of ESST for every 30 hours worked within the geographic boundaries of the City of Saint Paul. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(b).)

3.10 All Employees have the right to accrue up to 48 hours a year under the Ordinance. Employers can have a policy that allows Employees to earn more than 48 hours a year. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(b).)

3.11 Employees cannot accrue ESST in fractions of an hour. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(b).)

*Example:* If Nancy works 120 hours, she accrues four (4) hours of ESST (120 hours worked / 30 = 4 hours of ESST). Nancy will not earn another hour of ESST until she works an additional 30 hours. She cannot earn a half hour or 30 minutes for an additional 15 hours worked.

3.12 When calculating how many ESST hours an Employee has accrued, Employers must count all hours actually worked. Employers are not required to count any hours taken off for ESST as hours worked for accrual purposes. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(b).)

3.13 Hourly Employees accrue ESST when they work overtime hours. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(b).)

3.14 Employees can carry over 80 hours or more of ESST per Year. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c).)

3.15 An Employer may frontload the maximum amount an Employee can accrue under the Ordinance at the beginning of a Year rather than requiring an Employee to accrue ESST hours as they work. The maximum required to be frontloaded each Year is 48 hours if the Employer pays out any remaining ESST hours at the end of a Year, and 80 hours if the Employer does

not pay out any remaining ESST hours at the end of a Year. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c)(2).)

3.16 If an Employer pays an Employee for unused ESST at the end of a Year, the Employee is paid at the standard base rate the Employee earns from employment. In no case shall this Base Rate be less than that provided under Chapter 224 of the Code, or any applicable minimum wage law. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c)(2), §233.04(c) and §224.03.)

3.17 Employers must apply the same method of accrual to all employees. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c)(2).)

3.18 Modifying Method of Accrual. Employers who switch methods of accrual must ensure that Employees have at least as many ESST hours available on the first day of the new reporting Year as the Employee had on the last day of the immediately preceding reporting Year. (See Saint Paul, Minnesota, Municipal Ordinance §233.03.)

3.19 Employers are not required to pay out unused ESST upon an Employee's termination, resignation, retirement, or other separation from employment so long as that Employer has met the obligations outlined in the Ordinance. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(e).)

### Carrying Over ESST Balances from Year to Year

3.20 Unused accrued ESST carries over from Year to Year unless an Employer chooses to pay-out. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c).)

3.21 An Employer is required to allow an Employee to carry over 80 unused ESST hours. An Employer may opt to allow the Employee to carry over more. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c).)

3.22 Employers are required to permit Employees to maintain and/or use their carried over ESST time while concurrently accruing new ESST for hours worked. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(c).)

*Example:* Abdi begins working for a sporting goods store in Saint Paul and earns 30 hours in his first Year. In his second Year, he uses five (5) hours of ESST. Abdi can still earn 48 hours and end the Year with 73 hours of ESST (30 hours – 5 hours = 25 hours. 25 hours + 48 hours = 73 hours of ESST).

### When an Existing PTO Policy Complies with the Ordinance

3.23 If an Employer has a more generous PTO policy that meets or exceeds the minimum requirements of the Ordinance (48 hours per Year) and allows Employees to use their PTO for sick, vacation, and/or personal time, Employers do not need to give additional ESST hours. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(d) and §233.18.)

3.24 When an Employer offers a PTO policy made up of a combination of sick, vacation and/or personal leave, the Employer may require an Employee to comply with the Employer's usual and customary notice and procedural requirements for absences or for requesting leave. However, notice and procedural requirements may not interfere with the purposes for which the leave is needed or with the requirements of this Ordinance. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(d).)

*Example:* Derrick's Employer has a PTO policy that meets the requirements of the Ordinance. That policy requires Derrick to provide notice one (1) week in advance of taking leave. Under most circumstances, this is a permissible requirement. However, Derrick suddenly needs to take time off unexpectedly to care for his sick child. Because the Ordinance requires Derrick's Employer to allow him to use ESST for that purpose, they cannot deny him leave. However, had Derrick requested time off for vacation instead, they could deny his request for PTO for lack of notice.

3.25 An Employer does not need to provide additional leave for ESST under the Ordinance if an Employee uses all paid leave under a general PTO policy for a reason unrelated to ESST. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(d).)

*Example:* If Ashley's Employer offers 80 hours of PTO a Year and Ashley uses all her PTO hours on a vacation, her Employer does not need to offer more paid time off for ESST because her Employer has provided the minimum amount of PTO required by the Ordinance.

3.26 An Employer providing a PTO policy that meets the minimum requirements of the Ordinance is required to maintain records showing Employee reasons for use of the PTO (for example, vacation, sick time, safe time). (See Saint Paul, Minnesota, Municipal Ordinance §233.09(a).)

3.27 If the Employer provides PTO leave to meet their ESST requirement, the Employer's ESST policy must inform Employees of their right to ESST and that it is being met by PTO instead. (See Saint Paul, Minnesota, Municipal Ordinance §233.03(d).)

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

3.28 Salaried Employees accrue ESST based on their expected hours worked per week. (See Saint Paul, Minnesota, Municipal Ordinance §233.03.)

*Example:* Jeremy is a salaried Employee who generally works at least 40 hours per week. After three (3) weeks, Jeremy will earn four (4) hours of ESST (40 hours per week X 3 weeks = 120 hours / 30 = 4 hours of ESST).

3.29 An Employee required to remain on the Employer's premises or so close to the premises that the Employee cannot use the time effectively for the Employee's own purposes is working while on call and must accrue ESST based on the on-call hours. (See [Minn. R. §5200.0120, sub 2.](#))

3.30 An Employee not required to remain on or near the Employer's premises but is merely required to leave word at the Employee's home and/or with company officials where the Employee may be reached is not working while on call and does not accrue ESST during this time. (See [Minn. R. §5200.0120, sub 2.](#))

*Example:* Sara works for Rick's Restaurant in Saint Paul near the Xcel Energy Center. The Wild play a hockey game on Thursday night, and there is often a rush of customers before and after the game. Rick's Restaurant puts Sara on call for the night from 4:00 pm – 10:00 pm. At 6:00 pm, Rick's Restaurant calls Sara in and she works until 10:00 pm. Rick's Restaurant pays Sara only for the four (4) hours worked. Sara earns ESST for the four (4) hours she worked, not for the two (2) hours she was on call.

## **4. Use of ESST**

### [Employee Usage of ESST in General](#)

4.1 All Employees who are anticipated by the Employer to perform at least 80 hours of work in a Year within the City can use ESST for the reasons outlined in the Ordinance for hours they are scheduled to perform work. (See [Saint Paul, Minnesota, Municipal Ordinance §233.02, §233.03, and §233.04.](#))

4.2 Employees can use ESST for overtime hours they are scheduled to work or that they volunteered to work. ESST used for overtime is required to be paid at an Employee's base rate, not at their overtime rate. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(c\).](#))

*Example:* Leticia is scheduled to work five (5) hours of overtime on Saturday. Leticia's standard base rate is \$18/hour. She normally makes time-and-a-half working overtime, or \$27/hour. Leticia's Employer only has to pay her the base rate of \$18/hour for the ESST used during her scheduled overtime.

4.3 Employers are not required to permit use of ESST when an Employee is suspended or otherwise on leave for disciplinary reasons.

4.4 If an Employee contacts their Employer to request time off for any of the reasons listed under the ESST Ordinance, it shall be classified as a request to use available ESST. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04.](#))

4.5 An Employer can establish a policy for Employees to exchange hours or shifts and to donate unused ESST hours to another Employee. (See [Saint Paul, Minnesota, Municipal Ordinance §233.17](#))

#### Employer Requirements for Minimum Usage of ESST

4.6 Employees may use ESST in the same increment of time for which Employees are paid, provided an Employer is not required to provide leave in less than 15-minute increments. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(b\).](#))

4.7 Employers cannot require use of ESST in more than four (4) hour increments. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(b\).](#))

4.8 If an Employer's smallest increment of time tracked is four (4) hours and an Employee has an ESST balance below the minimum time allowed by the Employer, the Employer must allow the Employee to use their remaining balance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04.](#))

*Example A:* Shawn works for Camera Exchange. Camera Exchange requires Employees to use at least four (4) hours of ESST upon request to use any. Shawn has seven (7) hours of ESST saved and requests time off to go to the doctor. Camera Exchange must allow Shawn to use ESST but can require that Shawn use four (4) hours.

*Example B:* However, after Shawn uses four (4) hours, they need a follow-up doctor visit, so they request to use their remaining three (3) hours of ESST. While this is below Camera Exchange's four (4) hours minimum time required in the policy, Camera Exchange must allow Shawn to use the three (3) hours of ESST that they have left.

#### Use of ESST by On-Call Employees, Employees with Flexible Scheduling

4.9 An Employee required to remain on the Employer's premises or so close to the premises that the Employee cannot use the time effectively for the Employee's own purposes, is working while on call and can use ESST for the on-call period. (See [Minn. R. §5200.0120, sub 2.](#))

4.10 An Employee not required to remain on or near the Employer's premises but is merely required to leave word at the Employee's home and/or with company officials where the Employee may be reached cannot use ESST for the on-call period. (See [Minn. R. §5200.0120, sub 2.](#))



4.11 Employees who schedule one-on-one sessions with clients can be paid ESST when they are unable to reschedule the session due to reasons listed in the Chapter.

#### Paying Employees When They Use ESST

4.12 Employers must compensate Employees using ESST at their base rate for hourly Employees or at an equivalent rate for salaried Employees. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c).)

4.13 ESST must be paid on the date the Employee would have been paid for work had the Employee not used ESST. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c).)

4.14 Employers must maintain all coverage according to the same terms as otherwise normally apply for any insurance policy when an Employee is using ESST. The Employee must continue to meet any cost they regularly pay for any insurance coverage. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c)(2).)

4.15 An Employee returning from using ESST is entitled to return to employment at the same rate of pay, all accrued pre-leave benefits of employment, and have the same seniority they had been receiving when the leave started. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c)(3).)

#### Tips, Commissions, and Other Fluctuating Wages

4.16 Employees are not entitled to be paid for lost tips and/or commissions when they use ESST. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c)(1).)

4.17 To calculate the base rate for salaried or 100% commission paid Employees, use the formula below:

1. Take the Employee's total annual salary.
  - a. For Employees who earn 100% commission or are salaried, the total annual salary is the total wages paid out to the Employee over a regular and consecutive 12-month period.
  - b. For Employees who are salaried or earn 100% commission who have not worked a 12-month period, add together all the monthly earned wages since the Start of Employment. Divide the total wages earned by the number of months worked to get an average monthly wage. Multiply that average monthly wage by 12 to get the annual salary.
2. Divide the annual salary amount by 52 weeks worked, or expected to work, per Year to determine the Employee's weekly wage amount.

3. Divide the weekly wage amount by the number of hours in the Employee's normal or average work week to determine the Employee's hourly base rate.

*Example:* John earns \$80,000 for an annual salary and is not paid by the hour. On average, John works 40 hours per week. His weekly salary is \$1,538.46 ( $\$80,000 / 52 = \$1,538.46$ ). If John's normal work week is 40 hours, John's standard base rate is \$38.46 ( $\$1,538.46 / 40 = \$38.46$ ). John's standard base rate would be \$38.46.

- 4.18 Employees whose rate of pay fluctuates within a single job title depending on what duties they are performing for the Employer are paid at their base rate for ESST. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c).)

*Example:* Richard is paid \$15.00 per hour as a grocer but sometimes receives a "premium" rate of \$3.50 per hour extra for operating a forklift. Richard is scheduled to operate the forklift during his next shift but instead calls in sick and uses ESST. His ESST is paid out at \$15.00 per hour because that is his base rate of pay.

- 4.19 Employees whose rate of pay fluctuates between two (2) different job titles, are to be paid the base rate for the job they were scheduled to work when they used ESST. (See Saint Paul, Minnesota, Municipal Ordinance §233.04(c).)

*Example:* Bianca works two (2) different positions for a small law firm. Bianca regularly works 20 hours per week as a legal secretary and earns a standard rate of \$20 per hour. For the other 20 hours per week, she works as a paralegal and earns \$30 per hour. Bianca calls in sick for two (2) days and uses ESST. On both days, she was scheduled to work as a paralegal. Her ESST is paid out at a rate of \$30 per hour because she was scheduled to work as a paralegal those two (2) days.

- 4.20 For Employees who are paid on a piece rate basis, the Employer calculates the Employee's rate of pay by doing the following:

1. Add together the Employee's total earnings for the most recent workweek in which no ESST time was taken. This is the Employee's total weekly earnings.
2. Divide the total weekly earnings by the number of hours worked during the most recent workweek with no ESST used. This is the Employee's base ESST rate.
3. In no case shall the Employee's base rate be less than that required under Saint Paul's Minimum Wage law. (See Saint Paul, Minnesota, Municipal Ordinance §224.)

*Example:* Va Meng works in a call center. He takes calls and does data entry. Va Meng is paid \$1.00 for every call he takes and \$1.00 for every 30 entries he makes. Last week, Va Meng took 700 calls and entered 3,000 lines of data. He worked 30 hours. Va Meng was paid \$700 for his phone calls and \$100 for data entry. His total earnings were \$800 ( $\$700 + \$100 = \$800$ ). His base rate was \$26.67 ( $\$800 / 30 \text{ hours} = \$26.67$ ).

per hour). Va Meng requests ESST the next week. His Employer must pay him for ESST at a rate of \$26.67 per hour.

#### Notice from Employee to Employer about Using ESST

4.21 An Employer may require an Employee to provide notice of an absence for ESST as long as the requirements are consistent with the Employer's regular practice and do not interfere with the purposes of the leave. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(d\)](#).)

4.22 An Employee may provide reasonable notice of an absence for ESST without explicitly referencing the Ordinance or using the term "earned sick and safe time." (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(d\)](#).)

4.23 An Employer may ask whether the absence qualifies for ESST, provided that the Employer does not violate the privacy and confidentiality provisions of the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.05](#).)

4.24 An Employer that requires advance notice of the need to use ESST must have a written policy containing reasonable procedures for Employees to provide advance notice of the need to use ESST and shall provide a written copy of such policy to Employees. If a copy of the written policy has not been provided to an Employee, an Employer shall not deny the use of ESST on this basis. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(d\)](#).)

4.25 If an Employee knows they will need to use ESST in advance, an Employer may require advance notice of the intention to use ESST but must not require more than seven (7) days of advance notice. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(d\)](#).)

4.26 If the reason for ESST is unforeseeable, the Employee must provide notice as soon as practicable. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(d\)](#).)

4.27 An Employer is not allowed to require an Employee to disclose the specific nature of the illness or specific reason for seeking safe time beyond informing the Employer of their need for it—such as requiring disclosure of details relating to medical condition, domestic abuse, sexual assault, harassment, or stalking as related to an Employee's request to use ESST. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(e\)\(4\)](#).)

4.28 When an Employee uses ESST for more than two (2) consecutive scheduled workdays, an Employer may require reasonable documentation that the paid time off is being used for a reason that is consistent with the Ordinance. Reasonable documentation may include, but is not limited to, one (1) of the following: (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(e\)](#).)

1. Any documentation that indicates the Employee or their Family Member sought and received medical treatment.
2. A court record or documentation signed by a volunteer or Employee of a victim services organization, an attorney, a police officer, or an antiviolence counselor.
3. Documentation of a death of a Family Member, including but not limited to an obituary, death certificate, written notice from a funeral facility or funeral director, or any other documentation showing death may be accepted to show sufficient use of ESST for funeral or bereavement leave.
4. A written statement from the Employee indicating that the Employee is using or used ESST for a purpose covered by the ESST Ordinance. Statements can be written in the Employee's first language, can be in any format, and are not required to be notarized.

4.29 If there is a pattern of abuse of ESST by an Employee, the Employer may require reasonable documentation to verify that an Employee's use of ESST is consistent with the Ordinance. However, the Employer may not interfere with the Employee's ability to use ESST for reasons in the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04.](#))

4.30 An Employer cannot require an Employee to find a replacement worker to cover any hours or shift during which an Employee uses ESST. (See [Saint Paul, Minnesota, Municipal Ordinance §233.04\(f\).](#))

## **5. Confidentiality and Nondisclosure**

5.1 Employers shall maintain the confidentiality of information provided by an Employee regarding any use of ESST. (See [Saint Paul, Minnesota, Municipal Ordinance §233.05\(a\).](#))

5.2 Medical records must be kept as confidential and separate from personnel files. Employees can request the Employer destroy any medical records older than three (3) years. (See [Saint Paul, Minnesota, Municipal Ordinance §233.05\(c\).](#))

5.3 Employers may not discriminate against any Employee based on any records pertaining to ESST. (See [Saint Paul, Minnesota, Municipal Ordinance §233.05\(d\).](#))

## **6. Exercise of Rights: Retaliation Prohibited**

6.1 Employers may not retaliate against any Employee for exercising any rights under the Ordinance. Employers also may not interfere with Employee rights under the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.06\(a\).](#))

Examples of retaliation include, but are not limited to, the following: termination, suspension, revocation of benefits, demotion, transfer to a different location, job

reassignment, pay decrease, loss of hours, threats to report a person to immigration authorities, etc.

6.2 Employers cannot penalize an Employee who has requested to use ESST by giving or taking absence or attendance points to that Employee. (See [Saint Paul, Minnesota, Municipal Ordinance §233.06\(a\)](#).)

*Example:* If Jamila called in sick and requested to use ESST an hour prior to the start of her shift, the Employer cannot give Jamila a point to reprimand her for calling in only one (1) hour prior to the start of her shift

6.3 Employees may file a lawsuit in district court if they allege that their Employer interfered with their rights as outlined in the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.06\(d\)](#).)

6.4 It is a rebuttable presumption of retaliation if an Employer or any of their other employees disciplines, discharges, penalizes, interferes with, threatens, restrains, coerces, or otherwise retaliates or discriminates against an Employee within 90 days of inquiring about or filing a complaint with the Department. (See [Saint Paul, Minnesota, Municipal Ordinance §233.06\(e\)](#).)

6.5 Any person who complains to or communicates with the Department regarding ESST violations either verbally or in writing is protected from retaliation under this Chapter regardless of whether they reference to the Chapter or not. (See [Saint Paul, Minnesota, Municipal Ordinance §233.06\(h\)](#).)

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

## **7. Notice and Posting**

7.1 Employers must notify their Employees at the Start of Employment and on an annual basis about their rights under this Chapter. (See [Saint Paul, Minnesota, Municipal Ordinance §233.07\(e\)](#).)

7.2 At a minimum, the notice must include everything in Saint Paul Municipal Ordinance §233.07(a) and the following:

1. Employees are entitled to earn one (1) hour of ESST for every 30 hours worked.
2. Type of accrual method: accrual or frontloading.

3. The maximum number of hours an Employee may accrue in a Year.
4. How ESST carries over to the next Year.
5. The Employer's notice requirements for using ESST.
6. The Employer's policy for any Employee suspected of abusing ESST.

7.2 Every Employer must distribute or post their ESST notice. If an Employer has a written ESST policy, it must meet or exceed all the requirements of the Ordinance and these Rules. The notice and any written policy must be in English, and the primary language of the Employee as identified by the Employee. Employers can satisfy the notice requirements by: (See [Saint Paul, Minnesota, Municipal Ordinance §233.07\(b\) and §233.07\(d\).](#))

1. Regularly distributing the notice and a written ESST policy to each Employee personally, by regular mail, or by e-mail.
2. Regularly distributing the notice and a written ESST policy to Employees through resources like company newspapers, newsletters, check stubs, handbooks, manuals, and/or posting on the company intranet.
3. Physically posting the notice and a written ESST policy in a noticeable place where notices to Employees are typically posted.
4. Signed acknowledgements of receipt of the policy from each Employee may be satisfactory for providing notice under this section.

7.3 The Department has available a standard Workplace Notice Poster for Employers in five (5) different languages. (See [Saint Paul, Minnesota, Municipal Ordinance §233.07\(c\).](#))

7.4 An Employer must post the standard Workplace Notice Poster in a noticeable place, such as in a breakroom, by a punch clock, or at some common work meeting place where it can be seen by Employees. Employers may also put an electronic copy in an internet or electronic platform to satisfy physical posting requirements. The Workplace Notice Poster must be in English, and the primary language of Employees as identified by the Employees. (See [Saint Paul, Minnesota, Municipal Ordinance §233.07\(c\).](#))

## **8. Required Statement to Employee**

8.1 Upon request of the Employee, an Employer must provide in writing or electronically, the Employee's current amount of ESST available and amount of ESST used in the Year. (See [Saint Paul, Minnesota, Municipal Ordinance §233.08.](#))

8.2 It will be deemed compliant if an Employer puts an Employee's ESST balance on each pay stub per pay period or electronically in an online system where Employees can access their own information on their own personal device or company computer. (See [Saint Paul, Minnesota, Municipal Ordinance §233.08.](#))

## 9. Employer Records

9.1 Employer records must include all the information required in this Chapter and the following: (See Saint Paul, Minnesota, Municipal Ordinance §233.09(a).)

1. Earned ESST time.
2. Used ESST time.
3. Amount of any ESST paid out.
4. Employee requests to use ESST.
5. ESST policy and any Employee handbook.
6. Other information necessary and appropriate to enforce the Ordinance.

9.2 Employers must maintain records while an Employee is employed and for a three (3) year period after employment and provide such information to the Department upon request. (See Saint Paul, Minnesota, Municipal Ordinance 233.09(b), §233.09(c), and §233.09(d).)

9.3. If an Employer refuses to provide the Department access to records to investigate potential violations or monitor compliance with the requirements of the Chapter, the Department may seek an administrative search warrant for such records. (See Saint Paul, Minnesota, Municipal Ordinance §233.09(d),(f).)

### Failure to Provide Access to or Maintain Records

9.4 Once the Department notifies an Employer that an investigation under the Chapter has begun, the Employer may not destroy any records until the Employer is notified by the Department that the investigation has ended. (See Saint Paul, Minnesota, Municipal Ordinance §233.09.)

9.5 An Employer's failure to maintain, retain, or produce a full response to a request for records, or any other information that is reasonably related to the investigation following the execution of an administrative search warrant for such records shall create a presumption that the Employer has violated this Chapter absent clear and convincing evidence otherwise. (See Saint Paul, Minnesota, Municipal Ordinance §233.09(g) and §233.13(b)(2).)

9.6 When an Employer does not provide or maintain adequate records as mandated by the Ordinance, and where the Department orders backpay, the Department may make determinations of backpay wages based on available evidence. (See Saint Paul, Minnesota, Municipal Ordinance §233.09(h).)

9.6.1 Available evidence shall include, but is not limited to contracts, documentation and testimony provided by Employees, documentation provided by the Employer,



public documentation posted by the Employer, documentation provided by third-parties, wage estimates by the U.S. Bureau of Labor Statistics and other federal or state agencies.

## 10. Separation

10.1 When an Employee is separated from employment and rehired within 180 calendar days by the same Employer, the Employee is treated as if they never separated from employment for ESST purposes. Previously accrued and unused ESST must be reinstated and the Employee accrues additional ESST hours once the Employee begins reemployment. (See [Saint Paul, Minnesota, Municipal Ordinance §233.10.](#))

*Example:* Mai was hired by Smith's Lawn Services and began work on May 1st and works until November 30th. From December 1st through April 30th of the following Year, Mai is separated from employment with Smith's Lawn Services and performs no work for them. On May 1st of the following Year, Mai is reemployed by Smith's Lawn Services. Since Mai was rehired within 180 days of separation by the same Employer, her previously accrued ESST will be reinstated, she can use the hours already accrued, and she will accrue more ESST with every 30 hours worked.

## 11. Employer Succession

11.1 If an Employer sells its business or the business is otherwise acquired by another business, Employees retain and may use all accrued ESST if the Employee continues to work within the City of Saint Paul for the successor Employer, regardless of where the successor's headquarters is located. (See [Saint Paul, Minnesota, Municipal Ordinance §233.11\(a\).](#))

11.2 If Employees are terminated by successor employer and rehired within 30 days, they are entitled to all ESST accrued and not used that they had with the previous owner. (See [Saint Paul, Minnesota, Municipal Ordinance §233.11\(b\).](#))

11.3 If there is an open ESST investigation with the Department, the original Employer must notify the Department 30 days before a sale or transfer of the business. (See [Saint Paul, Minnesota, Municipal Ordinance §233.11\(c\).](#))

11.4 A successor Employer must provide Employees with its ESST policies at the time of sale or acquisition, or as soon as practicable, which must include a policy that complies with the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.11\(d\).](#))

## 12. Implementation



12.1 The authority of the Director and Department to implement, administer, and enforce this Chapter is clearly established and outlined in Saint Paul Legislative Code § 233. (See [Saint Paul, Minnesota, Municipal Ordinance §233.12\(a-b\).](#))

12.2 The Department will develop and implement culturally specific outreach to educate Employees and Employers about their rights and obligations under this Chapter. Upon the request of Employers or Employees and at times agreed upon by the Department, the Department will provide educational presentations to Employees and Employers on the Ordinance. (See [Saint Paul, Minnesota, Municipal Ordinance §233.12\(d\).](#))

### **13. Investigation and Enforcement**

#### **Time Limitations**

13.1 Any person alleging a violation of the Ordinance has the right to file a complaint with the Department within three (3) years of the alleged violation. (See [Saint Paul, Minnesota, Municipal Ordinance §233.13\(a\).](#))

#### **Data**

13.2 Per [City of Saint Paul Administrative Code § 11.03\(d\)](#) the Department will only reveal complainant information as required by law. The Department will, to the extent practicable, notify complainants that the Department will be disclosing their identity prior to such disclosure. The Minnesota Government Data Practices Act governs the data provided to the Department.

#### **Investigation Process**

13.3 The Department may investigate and resolve complaints. (See [Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\).](#))

13.4 The Department begins an investigation when a complaint is received by sending a Notice of Investigation to the Employer that sets forth the allegations. (See [Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\).](#))

13.5 The Department may amend and resent the Notice of Investigation to the Employer at any point in the investigation.

13.6 Within seven (7) days of receiving a Notice of Investigation, the Employer must post a form in a physical or electronic format to alert Employees of the investigation. The form will be sent to the Employer by the Department along with the Notice of Investigation. The form

must remain posted until the case is closed and the Department confirms the Employer is in compliance. The Employer must send a photo of where the notice has been posted to the Department within seven (7) days of posting. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\)\(1\).](#))

13.7 The Employer can choose to provide a written response, either via U.S. Mail, fax or e-mail to specify their position. If the Employer admits to violating the Ordinance, they must include in their position how they will remedy the violation. If the Employer denies the allegations, they must specifically state how the Employer is in compliance with the Ordinance. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\)\(2\).](#))

13.8 The Employer may request additional time to submit the written response to the Notice of Investigation or any other request made by the Department. Such a request should include the amount of time requested and the reason that the Employer cannot respond within the original time allowed. The Department's grant or denial of this request is not appealable.

13.9 The Employer and the Department may enter an informal mediation process at any time during the investigation. This process is an opportunity for the parties to negotiate a settlement and resolve the matter. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\)\(6\).](#))

13.10 If a Pre-Determination Settlement Agreement is not reached, the Department will continue the investigation and issue a Determination of Violation or Determination of No Violation based on a preponderance of the evidence. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(b\) and §233.13\(c\).](#))

#### [Determination of Violation or No Violation](#)

13.11 The Determination will be sent to the complainant who filed the suspected violation report and the Employer via either U.S. Mail, fax, or e-mail. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(c\).](#))

13.12 If the Department issues a Determination of No Violation, the complainant may ask for a reconsideration or bring a civil action in district court. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(c\).](#))

13.13 If the Department issues a Determination of Violation and the Employer denies the allegation they have the right to present evidence to a Hearing Examiner. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(e\).](#))

13.14 The Hearing Examiner will present the written findings to the City Council, which will uphold or overturn the finding based on the evidence in the record. There is no opportunity

for the Employer to submit new evidence at this point. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(f\).](#))

## Relief and Remedies

13.15 The Employer and the Employee may, with the approval of the Department, agree to any alternative resolution or remedy, such as financial compensation. Alternatives to reinstatement are not exclusive of other remedies under the Ordinance if additional violations occurred.

13.16 The Department may order reinstatement, financial compensation and public interest terms. Public interest terms include, but are not limited to policy corrections, Employee training, and compliance reporting. ([See Saint Paul, Minnesota, Municipal Ordinance §233.13\(h\).](#))

13.17 Reasonable interest on ordered financial compensation begins to accrue from the date of a Determination of Violation until all ordered financial compensation is paid. Reasonable interest is the annual interest rate set by the state court administrator pursuant to Minnesota Statutes § 549.09(c)(1).

## 14. Civil Enforcement

14.1 Where prompt compliance is not forthcoming with a final Determination of Violation, the Department may refer the action to the City attorney to consider initiating a civil action against an Employer for violating any requirement of this Chapter and, upon prevailing, shall be entitled to such legal or equitable relief as may be appropriate to remedy the violation. ([See Saint Paul, Minnesota, Municipal Ordinance §233.14.](#))