

# HREEO Report on ESST Impacts During COVID-19 Pandemic

## Labor Standards Enforcement and Education Division

April 1, 2020

### Intro

HREEO's Labor Standards Enforcement and Education division has observed a significant increase in public inquiring surrounding ESST since the federal, State and City emergency declarations from March 13 – 15, 2020. While many individuals may have other emergency protections such as relief under the Families First Coronavirus Relief Act, or Minnesota's expanded unemployment insurance under Governor Tim Walz's Executive Order 20-05, there are some situations where workers have little protection (if any) and would benefit from clarification and expansion of the ESST ordinance. A general overview of these protections is provided along with this report.

The Labor Standards Division has compiled a general overview of what sorts of protections those resources provide, and scenarios where clarification or emergency expansion of the ESST ordinance could close gaps. The following are the general lines of inquiry observed:

- 1) Do employees get ESST when a business reduces service due to an official order?
  - 2) Do employees get ESST when they have been laid off by their employer because of closure or reduction in service due to official declaration?
  - 3) Do employees get ESST when their hours have been reduced since the outbreak, despite the employer not being subject to closure/reduction by official order?
  - 4) Can members of vulnerable populations use ESST to stay away from work to avoid contracting COVID19?
  - 5) What ESST rights are available for employees who are under quarantine?
- 1) Do employees get ESST when a business reduces service due to an official order?

#### *Issue*

The ESST ordinance requires a business be "closed" by official order to stop the spread of pandemic. Because many businesses have gone to reduced service, they are not officially closed and arguably not subject to the requirement to provide ESST to their employees.

#### *Potential Solution*

Clarify that employees who can no longer come to work due to reduction in service may avail themselves of the sick and safe time they have earned.

- 2) Do employees get ESST when they have been laid off by their employer because of closure or reduction in service due to official declaration?

#### *Issue*

The ESST ordinance does not require cash-out of ESST upon separation from employment. However, the Labor Standards division is hearing from employers, employees and community advocates that

some employers are taking advantage of this loophole and quickly terminating employees to avoid paying ESST.

*Potential Solution*

Mimic the approach of the City of Seattle and require that employees who have been laid off as a result of the official orders may avail themselves of the sick and safe time they have earned. Seattle applies this requirement to businesses with more than 250 employees worldwide.

- 3) Do employees get ESST when their hours have been reduced since the outbreak, despite the employer not being subject to closure/reduction by official order?

*Issue*

Like the issue in the first inquiry, the ordinance requires a business be closed by official order. In this scenario, employees' hours are being cut, possibly as a direct result of the pandemic.

*Potential Solution*

Mimic the approach of the City of Seattle and require that when an employee's hours are cut as a result of the pandemic outbreak, they may avail themselves of the sick and safe time they have earned. Seattle applies this requirement to businesses with more than 250 employees worldwide.

- 4) Can members of vulnerable populations use ESST to stay away from work to avoid contracting COVID19?

*Issue*

Generally, the ESST ordinance does not allow for using ESST in order to simply avoid the possibility of becoming sick. However, the purpose of the ordinance is to ensure the general public health and welfare. COVID-19 is highly contagious and particularly dangerous to older adults, as well as individuals with underlying health conditions like chronic lung disease, asthma, serious heart conditions, and diabetes, among others. Treating severely sick individuals uses up health resources that have become dangerously scarce during the COVID-19 pandemic.

*Possible Solution*

Mimic the approach of the City of San Francisco and clarify that ESST is available to individuals who wish to stay home to prevent contracting the disease and are members of a group that has been identified by the CDC or Minnesota Department of Health as high-risk.

- 5) What ESST rights are available for employees who are under quarantine

*Problem*

Employees who have to quarantine are being asked for a doctor's note when their employers do not provide health insurance, and/or when the employee's doctor is recommending a two-week quarantine before seeing a doctor.

*Potential Solution*

Reiterate that any request for a doctor's note or other medical verification must be *reasonable* and that, in many cases during COVID-19, such a request may be unreasonable where employees do not have health insurance or have not been able to see a doctor.

## Conclusion

Saint Paul workers would benefit from clarification of ESST provisions during the COVID-19 pandemic, and expansion of certain rights during the pandemic. While the ESST ordinance was written to strike a balance between employers and employees, that balance has shifted due to the COVID-19 pandemic. Workers are finding themselves unable to use their ESST due to entirely unforeseen circumstances, and circumstances that the ESST ordinance seems intended to remedy. Saint Paul could support these workers through an emergency ordinance or amendments to the existing ESST ordinance, perhaps through solutions suggested above.