



To: Council Member Chris Tolbert

From: Beth Commers, Deputy Director, HREEO

Re: Proposal to Align Saint Paul's Earned Sick & Safe Time Ordinance with the State's bill, Ch. 53

Date: September 12, 2023

Summary of the Problem

The Minnesota Legislature passed a statewide Earned Sick and Safe Time (ESST) bill this last session. Although the bill was modeled after [Saint Paul's ESST Ordinance, Chapter 233](#), there are a few differences between the laws. Because many employers and employees work across municipal boundaries, even small differences will create confusion for both.

Solution

HREEO proposes amending our Ordinance to align with the [State's language](#) for Chapter 53 to allow for smoother compliance on the employer side and for equal conditions for employees.

Specifics

A Better Balance (ABM) compiled a summary of the main components of all ESST bills and ordinances in the state. This summary also succinctly identifies differences. That compilation can be found [here](#). David Gorski in the CAO has also done a thorough comparison of our ordinance and the State's bill. That analysis is also accompanying this memo.

Amending our Ordinance in the general following areas will expand access to ESST for employees working in Saint Paul and simplify ESST procedures for employers across Minnesota.

1. Definition of family – There are very few things more personal than one's own family. We have found in Saint Paul that our definition is too narrow for some real-life family situations. For example, we had one complainant who needed to miss work because his fiancé was in the hospital. Under our Ordinance, that individual's fiancé was not included in our municipal definition of family so the employer was within the law when they denied the use of ESST. The State's bill captures the reality of family in the modern age and allows an employee to choose. *We suggest expanding our definition of 'family' to the State's definition:*

child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stood in loco parentis, spouse, registered domestic partner, sibling, stepsibling, or foster sibling; biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor, grandchild, foster grandchild, or step grandchild, grandparent, stepgrandparent, a child of the sibling of the employee, a sibling of the parents of the employee, a child-in-law, sibling-in-law; any of the family members listed of a spouse or registered domestic partner, any other individual related by blood or whose close association with the employee is the equivalent of a family relationship and up to one individual annually designated by the employee.

2. ESST Information on earnings statement and pre-hire notice -- Labor Standards investigators have had many conversations with employees performing work in Saint Paul who are not aware of their right to ESST, nor have ready access to their ESST balance. The State's bill requires that employers provide an earnings statement at the end of each pay period, including ESST accrued, used, and available during the pay period. The bill also requires that employers provide a written notice informing them of their paid vacation, sick time, or other paid time off accrual and terms of use upon hiring. These measures will increase employee awareness of ESST and reduce barriers to access. These components are nationwide best practices and are modeled after the ESST ordinance in Minneapolis as they have been found to create better access for employees and stronger compliance for employers. *We suggest adding these requirements to our Ordinance.*
3. ESST available for use as soon as it is accrued or frontloaded -- A need for ESST may occur at any time, yet Saint Paul's ESST ordinance allows employers to prohibit employees from using their ESST during the first 90 days of employment. *We recommend removing this provision in our Ordinance as it is arbitrary.*
4. Documentation of need to use ESST -- Saint Paul and Minnesota ESST laws both allow employers to request documentation that an employee's need to use ESST is allowable under the law after an absence of 3 consecutive workdays. The State bill provides additional clarity around this requirement and allows for employees to provide their own signed statement to document the reason they used ESST if they did not consult a healthcare professional or were otherwise unable to obtain a medical note as documentation. The State's bill recognizes that employees may not always need and/or be able to consult a healthcare professional each time there is a need to utilize ESST. This provision reduces barriers to ESST use while also allowing employers to implement practices to prevent misuse of ESST. *We suggest modifying our provision to allow for an employee to document their need for ESST rather than require a medical professional to verify.*
5. Rehire period -- When there is a separation from employment, the State's ESST bill requires that the employee's available balance of ESST be reinstated if the employee is rehired within 180 days. Saint Paul's ESST ordinance limits this period to 90 days, which restricts ESST employees for those who temporarily separated from employment. The State's 180-day rehire period increases access to ESST for employees through shifting economic and employment conditions and some seasonal employment opportunities. *We recommend adopting the State's rehire period of 180 days.*
6. Enforcement, Complaint timeliness -- Saint Paul's ESST Ordinance was amended in January of 2023 to allow the filing of complaint regarding matters that have occurred within two years but requires employers to retain ESST records for three years. The State bill allows three years from the violation to commencement of recovery of damages resulting from violations of the law. *We recommend changing our Ordinance to allow for the filing of complaints of violations that occurred within the last three years to align with the State and our data retention requirement.*
7. Financial Remedies, Back pay -- The State's bill allows the DLI Commissioner to order back pay, gratuities, and compensatory damages to employees impacted by violations of the law, multiplied by two (less any amount already paid to employee). Our Ordinance allows us to order back pay only but allows the backpay amount to be multiplied by two or three. *We recommend adding the capacity to order gratuities and compensatory but keeping the ability to order backpay times three as the higher threshold is better for workers.*

8. Financial Remedies, Civil penalties – The State bill allows for a civil penalty of \$10,000 for each violation of the law for each employee impacted by said violation. “In determining the amount of the civil penalty, the appropriateness of such penalty to the size of the employer’s business and the gravity of the violation shall be considered.” Our Ordinance allows for a civil penalty up to \$1,000. *We would suggest that we adopt language above similar to the State’s bill and allow for a civil penalty up to \$10,000 for each violation to give us room to negotiate and to account for varying situations.*

Thank you for consideration Council Member Tolbert! Without your vision for Earned Sick and Safe Time in the City, the State’s bill and these essential protections for workers may have never come to fruition.

I look forward to connecting soon.