



# EARNED SICK AND SAFE TIME ORDINANCE

## Revised Rules

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## **Background**

On June 6, 2022, the City of Bloomington adopted the City's Earned Sick and Safe Leave (ESSL) Ordinance. The ESSL Ordinance was first made effective July 1, 2023. On January 23, 2023, the City Council amended the ESSL Ordinance. On September 25, 2023, the City Council amended the ESSL Ordinance to conform to the statewide Earned Sick and Safe Time (ESST) laws. The ESST Ordinance is codified at <https://blm.mn/ESST>. The ESST Ordinance states that the "City Attorney's Office shall publish, maintain, and make available to the public any such initial rules at least 90 days prior to their effective date. Any revisions to published rules shall be published, maintained, and made available to the public at least 30 days prior to their effective date." The ESST Ordinance is in effect as of January 1, 2024.

## **Purpose**

These ESST administrative rules govern the practices of the City Attorney's Office in implementing, administering, and enforcing the Ordinance. Those purposes are:

- (a) To ensure that individuals employed in Bloomington can address their own health needs and the health needs of their families by requiring Employers to provide a minimum level of sick and safe leave, including time for family care;
- (b) To reduce public and private health care costs in Bloomington by enabling individuals to seek early and routine medical care for themselves and their Family Members;
- (c) To protect the public's health in Bloomington by reducing the risk and spread of contagion;
- (d) To assist victims of Domestic Abuse and their Family Members by providing them with job-protected sick and safe leave time away from work to allow them to receive treatment and to take the necessary steps to ensure their protection and wellbeing;
- (e) To protect individuals employed in Bloomington from losing their jobs while they use sick and safe leave to care for themselves or their families;
- (f) To safeguard the public welfare, health, safety, and prosperity of the people of and visitors to Bloomington; and
- (g) To accomplish the purposes described in subsections (a)-(f) in a manner that is feasible for Employers and that does not require Employers to provide any additional sick and safe leave to their Employees if they already provide the same amount of sick and safe leave that can be used for the same purposes and under the same conditions as required in this Chapter 23, article one.

## **Rule 1. Definitions**

- A. *Calendar year* means a regular and consecutive twelve-month period as determined by an Employer and may be based on an Employee's employment anniversary date.
- B. *City* means the City of Bloomington, Minnesota.
- C. *Domestic Abuse* means the following, if committed against a family or household member by a family or household member: (1) physical harm, bodily injury, or assault; (2) the infliction of fear of imminent physical harm, bodily injury, or assault; or (3) terroristic threats, criminal sexual conduct, sexual extortion, or interference with an emergency call. Minn. Stat. § 518B.01

- D. *Employee* means any person employed by an Employer who performs work within the geographic boundaries of the City of Bloomington for more than 80 hours in a Calendar year. Employee does not include: (1) independent contractors; (2) Student interns; (3) and any person classified as an extended employment program worker as defined in Minn. R. 3300.6000, subp. 13 (2019) and participating in the Minnesota Statutes, section 268A.15 extended employment program.
- E. ESST means Earned Sick and Safe time.
- F. *Family Member* means  
 (1) an employee's:  
     (i) child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in loco parentis;  
     (ii) spouse;  
     (iii) sibling, stepsibling, or foster sibling;  
     (iv) biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child;  
     (v) grandchild, foster grandchild, or step grandchild;  
     (vi) grandparent or step grandparent;  
     (vii) a child of a sibling of the employee;  
     (viii) a sibling of the parents of the employee; or  
     (ix) a child-in-law or sibling-in-law;
- (2) any of the family members listed in clause (1) above of a spouse;  
 (3) any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and  
 (4) up to one individual annually designated by the employee.
- G. *Health Care Professional* means any person licensed, certified, or otherwise authorized under federal or state law to provide medical or emergency services, including doctors, physician assistants, nurses, advanced practice registered nurses, mental health professionals, and emergency room personnel.
- H. *Ordinance* means the Bloomington Code of Ordinances, Chapter 23, Article I.
- I. *Safe Time* means paid leave that Employees may use for absences to care for themselves or family members due to Sexual Assault, Domestic Abuse, or Stalking.
- J. *Sick and Safe Time* means paid leave that may be used for the same purposes and under the same conditions as City Code § 23.07.
- K. *Sick Time* means paid or unpaid time off that Employees may use for medical reasons, including physical or mental illness, health condition, preventative health care, injury, treatment, and prenatal care.
- L. *Stalking* means to engage in conduct which the actor knows or has reason to know would cause the victim under the circumstances to feel frightened, threatened, oppressed, persecuted, or

intimidated, and causes this reaction on the part of the victim regardless of the relationship between the actor and the victim. *Minn. Stat. § 609.749.*

- M. *Student intern* means an unpaid student who is acquiring hands-on-training, work experience, or clinical training in connection to a course of study or higher education program for a limited period of time.
- N. Unless defined above, the capitalized words used in these rules are defined in the City Code, Section 23.05.

## **Rule 2. Covered Employees and Hours Worked**

- 2.1 An individual is considered an Employee for purposes of the Ordinance if the individual performs work for an Employer for more than 80 hours in a Calendar year while the individual is physically located in Bloomington, regardless of the location of the Employer.
  - 1. Employers are not required to track progress towards this threshold for each Employee where the Employee exceeds the 80-hour threshold, based on occasional work in Bloomington. An Employer carries the burden to show otherwise in those cases.
  - 2. Hours worked by an Employee while physically located outside of Bloomington do not count toward coverage under the Ordinance.
- 2.2 Once an Employee performs work in Bloomington at least 80 hours in a Calendar year, the Employee is entitled to accrue ESST for all hours during which the Employee performs work for that Employer during the remainder of that Calendar year, while physically located in Bloomington.
  - 1. ESST credited time includes the 80 hours worked towards the coverage threshold under the Ordinance.
  - 2. Employers are not required to offer ESST accrual for hours worked by an Employee while physically located outside of Bloomington.
- 2.3 For employees who work in multiple cities during a work shift, an Employer may make a reasonable estimate of an Employee's time spent working in the City for purposes of ESST coverage, accrual and use. Documentation of how the reasonable estimate was derived may include but is not limited to dispatch logs, Employee logs, delivery addresses and estimated travel times, or historical averages.
- 2.4 An Employee, who is otherwise covered by the Ordinance, is covered regardless of immigration status.
- 2.5 Employers do not need to provide additional ESST to Employees if they:
  - 1. provide their Employees with ESST under a paid time off policy or other paid leave policy which meets the accrual requirements for ESST;
  - 2. allow Employees to use available leave hours for the same purposes and under the same conditions as ESST.
- 2.6 An Employee supplied by a staffing agency to a client is an Employee of the staffing agency for purposes of the Ordinance unless there is a contractual agreement between the agency and client stating otherwise.

### **Rule 3: Employees Exempted from the ESST Ordinance**

- 3.1 Independent contractors are not covered by the Ordinance.
- 3.2 Student interns that are unpaid are not covered by the Ordinance.
- 3.3 Employees classified as extended employment program workers as defined in Minnesota Rules part 3300.6000 and participating in the extended employment program as defined in Minnesota Statutes, section 268A.15 are not covered by the Ordinance.

### **Rule 4: Accrual of Earned Sick and Safe Time**

- 4.1 Employees accrue 1 hour of ESST for every 30 hours worked.
- 4.2 Employees begin to accrue ESST when the Ordinance is in effect.
- 4.3 Employees who start work after the effective date of the Ordinance begin to accrue ESST on their employment start date.
- 4.4 When calculating how many ESST hours an Employee has accrued, Employers must count hours actually worked. Employers are not required to count the hours taken off for Sick and Safe Time.
- 4.5 Employees may accrue up to 48 hours in one year unless their Employer opts to allow more ESST.
- 4.6 Employees may carry over up to 80 hours of unused ESST from year to year. Instead of allowing the carryover of accrued but unused ESST into the following year as provided, Employers may provide Employees ESST for the year that meets or exceeds the requirements that is available for use immediately as follows:
  - 1. Advance 48 hours at the beginning of the following year if an Employer pays an Employee for accrued but unused ESST at the end of the year, at the regular pay rate from the Employee's employment.
  - 2. Advance 80 hours at the beginning of the following year if an Employer does not pay the Employee for accrued but unused ESST at the end of the year, at the regular or greater pay rate from the Employee's employment.
- 4.7 Hourly Employees accrue ESST when they work overtime hours. However, there is no requirement to provide "an overtime pay rate" for ESST accrual.
- 4.8 Frontloading is permissible so long as it meets the minimum requirements of the Ordinance:
  - a. Employers should provide at least 48 hours of ESST to Employees their first year and 80 hours a year thereafter.
  - b. Employers must allow Employees to use this time under the same conditions as outlined in the Ordinance and these rules.
- 4.9 ESST accrues in hour-unit increments. Employers may exceed this minimum standard by accruing in fractions of an hour.

For example, an Employee who works for 15 hours will accrue .5 ESST hour.
- 4.10 Total accrued but unused ESST for an Employee may only exceed 80 hours at any time if the Employer agrees to a greater amount.

## **Rule 5. Use of Accrued Earned Sick and Safe Time**

- 5.1 New Employees hired after the Ordinance becomes effective are entitled to use accrued ESST immediately as it is accrued.
- 5.2 Current Employees are entitled to use accrued ESST on the effective date of the Ordinance.
- 5.3 All covered Employees can use ESST during times they are scheduled to perform work.
- 5.4 An Employee may use accrued ESST for the following reasons:
- a) An Employee's mental or physical illness, injury, health condition, 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 or health care, including pre-natal and post-natal care.
  - b) An Employee's need to provide care for a Family Member with mental or physical illness, injury, or other health condition, need for medical diagnosis, care, or treatment of a mental or physical illness, injury or other health condition, or an Employee's need for preventive medical or health care, including pre-natal or post-natal care.
  - c) The closure of the Employee's place of business by a public official's order, closure of school or place of care by a public official's order, closure of school or place of care due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.
  - d) Absence due to Domestic Abuse, Sexual Assault, or Stalking of the employee or employee's family member if the absence is used for seeking counseling services, seeking medical or psychological care due to injury or disability caused by Domestic Abuse, Sexual Assault, or Stalking, seeking services from victim services organizations including relocation, seeking legal advice, preparing for, or participating in legal proceedings due to Sexual Assault, Domestic Abuse, or Stalking.
  - e) The Employee's inability to work or telework because the Employer does not allow the Employee to work due to:
    - 1. health concerns related to the potential transmission of a communicable illness related to a public emergency, or
    - 2. is seeking or waiting for the results of a diagnostic test for, or a medical diagnosis of a communicable disease related to a public emergency and such Employee has been exposed to a communicable disease; or the Employer has requested a test or diagnosis.
  - f) When a Health care professional or health authorities that have jurisdiction determines that the presence of the Employee, or Family Member of the Employee in the community would jeopardize the health of others due to exposure of the Employee or the Employee's Family Member to a communicable disease. It does not matter if the Employee or the Employee's Family Member has contracted a communicable disease.
- 5.5 An Employer may require an Employee who intends to use ESST to provide prior notice of no more than seven (7) calendar days if the need is foreseeable. If the reason for the use of ESST is unforeseeable, an Employee may be required to provide notice of the intent to use ESST as soon as practical.

- 5.6 For absences exceeding three (3) consecutive days, an Employer may require reasonable documentation to verify or confirm that an Employee’s use of ESST is for an authorized purpose as outlined in City Code § 23.07(b) of the City ’s ESST Ordinance and these Rules.
- 5.7 For earned sick and safe time pursuant to the City Code § 23.07(b) (1), (2), (5), or (6), reasonable documentation may include a signed statement by a Health care professional indicating the need for use of earned sick and safe time.
- 5.8 However, if the employee or employee's family member did not receive services from a Health care professional, or if documentation cannot be obtained from a Health care professional in a reasonable time or without added expense, then reasonable documentation may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose pursuant to the City Code 07(b) (1), (2), (5), or (6).
- 5.9 For earned sick and safe time to care for a Family Member pursuant to City Code § 23.07(b)(4), the Employer must accept a written statement from the Employee showing that the Employee is using or used earned sick and safe time for a qualifying purpose as reasonable and sufficient documentation.
- 5.10 Reasonable documentation for safe time must communicate:
- a) that the Employee or the Employee’s Family Member is experiencing domestic violence, Sexual Assault, or Stalking; and
  - b) that the leave as taken was for a purpose covered by City Code §23.07(b)(3).
1. Reasonable documentation the Employer must accept includes court records and documentation signed by:
    - a) a volunteer or employee of a victim services organization;
    - b) an antiviolenace counselor;
    - c) an attorney; or
    - d) a police officer.
  2. If an Employer requires verification, and the Employee or the Employee’s Family member does not receive services from a Health care professional, or if documentation cannot be acquired from a Health care professional within a reasonable time, a written statement from the Employee showing that the Employee is using or used earned sick and safe time for a qualifying purpose according to § 23.07(b) (1), (2), (5), or (6), is reasonable and sufficient.
- 5.11 An Employer must not require an Employee to seek or find another worker to cover the scheduled work hours during which the Employee uses ESST as a condition to use ESST.



- 5.12 Employers may establish their own increments of time for using ESST so long as it is consistent with their existing business practice and policies, provided that their practice complies with the Ordinance and these rules.
1. The smallest unit of time for ESST use established by the Employer may not exceed four hours.
  2. If an Employee has an ESST balance below the minimum time allowed by the Employer, the Employer must allow the Employee to use their balance.
- 5.13 An Employer must compensate an Employee at the regular rate of pay for scheduled work hours during which the Employee used their accrued ESST.
1. An Employer must not pay an Employee at a rate less than the rate requirement listed in M.S. § 177.24.
  2. For construction industry Employees working on private or public projects, an Employer may choose to:
    - a) Pay no less than the wage rate defined by M.S. § 177.42 and as calculated by the Minnesota Department of Labor and Industry; or
    - b) Pay no less than the required rate established in a registered apprenticeship agreement for apprentices registered with the Minnesota Department of Labor and Industry
  3. An Employer is not required to compensate an Employee for hours an Employee is not scheduled to work.

#### **Rule 6: Exercise of Rights; Retaliation Prohibited**

- 6.1 Employers may not retaliate against any Employee for exercising any right under the Ordinance. Employers also may not interfere with Employee rights under the Ordinance.
- 6.2 Protection against retaliation includes, but is not limited to, an adverse action by the Employer after the following Employee actions:
- a) Requesting ESST.
  - b) Using ESST.
  - c) Providing information to another Employee about ESST.
  - d) Otherwise assisting another Employee trying to use ESST.
  - e) Informing someone about an Employer’s alleged violation of the Ordinance.
  - f) Submitting a complaint or filing an action to enforce a right to accrued ESST.
- 6.3 Adverse employment action means any action taken or threatened by an Employer against an Employee for their exercise of rights under the Ordinance. Adverse action may include but is not limited to:
- a) Denying use of or delaying payment for paid Sick and Safe time, wages, tips, gratuities, and service charges, except those service charges itemized as not being payable to the Employee or Employees servicing the customer.
  - b) Terminating, suspending, demoting, or denying a promotion.
  - c) Reducing the number of work hours for which an Employee is scheduled.
  - d) Altering the Employee’s preexisting work schedule.

- e) Reducing the Employee’s rate of pay or benefits.
  - f) Threatening to take or acting based upon the immigration status of an Employee or an Employee’s Family Member.
  - g) Counting used ESST as an unexcused absence from work.
1. If within ninety (90) calendar days of exercising a right, an Employer takes an adverse action against an Employee, it is presumed that the Employer retaliated.
  2. This presumption may be rebutted by the Employer through providing clear and convincing evidence that the action was non-retaliatory.
- 6.4 It is not retaliation for an Employer to investigate an Employee’s suspected abuse of ESST (such as using ESST for vacation leave, rather than as sick or safe time). This investigation should not interfere with the Employee’s ability to use ESST.

**Rule 7: Employer Notice and Posting Requirements**

- 7.1 Employers must give notice to all covered Employees of their rights and protections under the Ordinance.
- 7.2 An Employer who gives Employee handbooks or any type of orientation material to its Employees must include a copy of the workplace notice poster with the material.
- 7.3 The City Attorney’s Office will produce a standard workplace notice poster for Employers in English and all languages spoken by five (5) percent of the workforce in the City. The notice poster is available in English from the City Attorney’s Office and on the City’s ESST webpage.
- 7.4 Employers may comply with the Ordinance’s notice requirements by posting the standard workplace notice poster in a conspicuous place where Employees can clearly see it, such as in a breakroom, by a punch clock, or at some common work meeting place.
- 7.5 Lack of compliance with the required poster provision of City Code § 23.09(b) will not be considered a violation unless it occurs along with another violation of a different provision of the ESST Ordinance.

**Rule 8: Employer Required to Provide Earnings Statement to Employee**

- 8.1 An Employer is required to provide Employees earnings statements showing the number of ESST hours accrued and unused at the end of each pay period.
- 8.2 Earnings statements must also include the information required by Minnesota Statutes §181.032(b), as amended.
- 8.3 Earnings statements shall be either in writing or by electronic means.
- 8.4 An Employer must provide earnings statements to an Employee in writing, rather than by electronic means if the Employee requests to receive earning statements in written form, at least twenty-four (24) hours after receiving the request.
- 8.5 Once an Employer has received notice from an Employee that the Employee would like to receive earnings statements in written form, the Employer must comply with that request on an ongoing basis.

**Rule 9: Records an Employer is Required to Keep**

- 9.1 An Employer must keep accurate records for each Employee that show the following:

- a) Hours worked (for non-exempt Employees).
  - b) Accrued and unused ESST.
  - c) Used ESST.
- 9.2 An Employer must retain required records for three (3) years plus the current Calendar year.
- 9.3 An Employer may make a reasonably good faith estimate of an Employee’s time spent working in the City for purposes of ESST coverage, accrual, and use. Documentation of how the estimate was derived may include, but is not limited to, dispatch logs, delivery addresses, estimated travel times, or historical averages.
- 9.4 For salaried Employees who work in the City, Employers may maintain records of the Employee’s regular workweek hours, rather than tracking actual hours worked, so long as the hours of a normal work week are used as the actual basis for the Employee’s accrued and used ESST.
- 9.5 For Employers offering unlimited ESST, a sentence on the pay statement stating that there is unlimited ESST offered complies with these Rule 9 requirements. It could also be stated in orientation materials and the Employee handbook.
- 9.6 Employers using an accrual-based PTO policy to comply with the Ordinance must track time off accrued and used, but they do not need to track the specific reasons for the use of PTO.
- 9.7 An Employee must be allowed to inspect their own ESST records required by this section at a reasonable time and place.
- 9.8 Once the City Attorney’s Office notifies an Employer that an investigation has commenced, the Employer may not destroy any ESST record until the Employer is notified by the City Attorney’s Office that the investigation has concluded. Only records older than three years can be destroyed.
- 9.9 The City Attorney’s Office must have access to ESST records with reasonable notice at a time agreed upon together, to monitor for compliance. Monitoring includes but is not limited to inspection and copying of books and records, current and former Employee interviews, and investigating alleged violations of this article.
- 9.10 An Employee’s social security number and personal address shall be private data and not reported in public record.
- 9.11 An Employer who has an Employee’s or an Employee’s Family Member’s health or medical information, or information related to Domestic Abuse, Sexual Assault, or Stalking, must keep such information confidential and is prohibited from disclosing the information.
- 9.12 An Employer can disclose an Employee or an Employee’s Family Member health or medical information, or information related to Domestic Abuse, Sexual Assault, or Stalking, with the permission of the Employee, with a court or administrative agency order, or when required by federal or state law.
- 9.13 The City Attorney’s Office will presume that an Employer violated this article if the Employer does not maintain or keep adequate records or does not allow the City Attorney’s Office reasonable access to ESST records when there are issues related to an alleged violation of an Employee’s rights. This presumption can be rebutted if there is clear and convincing evidence showing otherwise.

### **Rule 10: Termination, Transfer and Separation: Effects on ESST**

- 10.1 An Employee is not entitled to payments or other reimbursements for unused accrued ESST when their employment ends.
- 10.2 An Employer who transfers an Employee to another division, entity, or location outside of the City, and does not allow the Employee to use unused accrued ESST outside of the City limits must keep the Employee's ESST on the books for three (3) years following the date of transfer.
  - 1. This accrued unused ESST can be used by the Employee if the Employee remains employed by the Employer and is transferred back to a division, entity, or location within the City.
- 10.3 An Employee is entitled to use all accrued but unused ESST if the Employee is transferred to another division, entity, or location within the City if employed by the same Employer as provided by the Ordinance.
- 10.4 If an Employee is rehired within 180 calendar days after separation, the Employer must reinstate (and allow immediate use of) previously accrued and unused ESST hours, unless the Employer paid the Employee for unused ESST hours at the time of initial separation.
- 10.5 If the Employee's break in employment is more than 180 calendar days, the ESST Ordinance does not require the Employer to reinstate accrued and unused ESST hours.
- 10.6 If a returning Employee does not have to go through the normal hiring process (e.g. application, I-9, etc.), then they are considered to have been continuously employed and will retain their previously accrued ESST hours regardless of how long it has been since they last performed work for the Employer.

### **Rule 11: New Ownership of a Business: Effects on ESST**

- 11.1 If an Employer sells its business or the business is otherwise acquired by another business, Employees retained by the acquiring business may use all accrued but unused ESST if the Employee continues to work within the City for the new Employer.

### **Rule 12: Employee Voluntary Exchange of Hours**

- 12.1 Employers may create a policy that allows Employees to willingly trade shifts or exchange hours under the Ordinance.

### **Rule 13: Power and Authority of the City Attorney's Office**

- 13.1 The City Attorney's Office has broad powers to implement, enforce, and administer this Ordinance. The City Attorney's Office also has broad power to investigate potential violations of the Ordinance when it has reason to believe a violation has occurred.
- 13.2 The City Attorney's Office has broad power to publicize rules to administer, enforce, and implement the Ordinance.
- 13.3 These rules must be consistent with the Ordinance and relied upon by Employers, Employees, and other persons to determine their rights and responsibilities; establish procedures and processes that ensure fair, efficient, and cost-effective implementation and enforcement of the Ordinance, including procedures for monitoring Employer compliance.

#### **Rule 14: Implementation of ESST Ordinance**

- 14.1 The City Attorney's Office will coordinate with and work with all relevant city departments, state and federal agencies, divisions, departments, bureaus, or institutions of government to implement the Ordinance.
- 14.2 The City Attorney's Office will develop and implement multilingual and culturally specific outreach and community development programs that aim to educate Employers and Employees about their rights and duties under the Ordinance.

#### **Rule 15: Enforcement and Investigation Procedures of Ordinance**

- 15.1 An Employee or other person may report to the City Attorney's Office any suspected violation of the Ordinance. A report of a suspected violation can be filed if the suspected violation occurred after July 1, 2023.
- 15.2 An Employee or other person may report a suspected violation of the Ordinance using the following contact methods:
  - a) Submit form online via the "File a Report" link on the City's ESST webpage at: <https://blm.mn/ESST>
  - b) Call: 952-563-8753
  - c) Email: [ESST@bloomingtonmn.gov](mailto:ESST@bloomingtonmn.gov)
  - d) Mail or in person: Legal Department – Compliance Division, 1800 Old West Shakopee Road, Bloomington, MN 55431.
- 15.3 The City Attorney's Office has sole discretion to decide whether to investigate a suspected violation of the Ordinance.
- 15.4 If the City Attorney's Office determines not to investigate a suspected violation of the Ordinance, the City Attorney's Office will provide a written notification to the reporting party, declining to further investigate the report, and stating the reason(s) for declining.
  1. The Employee or other person may file a request for the City Attorney's Office to reconsider its decision to decline investigating the report within twenty-one (21) business days after receiving the decline notification.
  2. The City Attorney's Office will provide a written response on the reconsideration within twenty (20) business days.
- 15.5 If the City Attorney's Office determines it will pursue a suspected violation of the Ordinance, it will serve a notice of investigation stating the allegations and pertinent facts upon an Employer by regular first-class U.S. mail to the last known address on record.
- 15.6 This notice will be accompanied by a written request for a written position statement and may include a request for records or other information. The notice of investigation will also inform the Employer that retaliation against the Employee for claiming rights under the Ordinance are grounds for additional monetary damages.
  1. The Employer's written position and response to any records request must be provided to the City Attorney's Office within twenty-one (21) business days.
  2. An Employer shall submit all payroll and time records, or other data requested by

the City Attorney's Office in electronic spreadsheet format, or other format requested by the City Attorney's Office.

- a) If an Employer fails to provide a position statement or to timely and fully respond to a records request or any other reasonable request issued by the City Attorney's Office pursuant to an investigation, said failure creates a rebuttable presumption of a violation of the Ordinance.
- b) An Employer who fails to respond to a records request may not use such record in any appeal to challenge the correctness of any determination of violation by the City Attorney's Office, of damages owed, or penalties assessed.
- c) The written position statement must specifically state the Employer's position regarding the allegations set forth in the notice of investigation.
  1. If the Employer admits to violating the Ordinance, they must answer how they will remedy the violation and make the reporting party whole.
  2. If the Employer denies the allegations, they must specifically state how the Employer is complying with the Ordinance.
  3. The Employer may provide any additional information it believes is relevant to the investigation and the City Attorney's Office will consider it.

15.6 During the investigation process, the City Attorney's Office may require a fact-finding conference or participation in a negotiation or mediation process with the Employer, the reporting party, and any of their agents to:

- a) define the issues;
- b) determine which elements are not disputed;
- c) resolve those issues that can be resolved; and
- d) afford an opportunity to discuss and negotiate a settlement.

15.7 The City Attorney's Office will issue a written determination of violation or no violation except where there is an agreed upon settlement between the Employer and reporting party. The determination will include:

- a) Findings of fact;
- b) Statement of whether or not a violation has occurred;
- c) Conclusions of law;
- d) Remedy; and
- e) Notice of the right to appeal.

15.8 The determination of violation must be issued to the Employer and the reporting party.

15.9 The City Attorney's Office must issue a warning letter and notice to correct and attempt to mediate disputes for alleged first violations arising during the first year (365 days) following July 1, 2023.

15.10 The City Attorney's Office may impose the relief and penalties provided in Appendix A of the City Code for subsequent suspected violations occurring during the first year (365 days) following July 1, 2023.

- 15.11 The City Attorney's Office may extend any of the time limits in this Rule for a reasonable period upon request or upon its initiative to promote full and fair proceedings.

**Rule 16: ESST Appeal Process for Either Party**

- 16.1 An Employee, former Employee, or Employer may appeal the determination of a violation by filing a written request for a hearing with the City Attorney's Office within twenty-one (21) business days of the date of service of the determination notice.
- a) The City Attorney's Office will refer the matter to a hearing officer pursuant to Section 1.17 of the City Code.
  - b) Administrative appeals are heard by a hearing officer.
  - c) Appeals must be in writing.
  - d) The party requesting the appeal shall pay one-half of the cost of the hearing.
  - e) Failure by the Employer, Employee, or former Employee to file a timely written appeal will constitute admission to the violation, and the violation shall be final after the twenty-one (21) business day period expires.
- 16.2 A notice of the hearing or continuance must be served by the City in person or by mail to the Employer at least fourteen (14) calendar days prior to the scheduled hearing.
- 1. The notice of hearing will include the following:
    - a) The name of the assigned hearing officer
    - b) The date, time, and place of the hearing
  - 2. Authorization for continuance shall be granted by the hearing officer only upon good cause shown.
  - 3. Subsequent requests for a continuance, or requests made less than five (5) business days prior to a scheduled mediation or hearing, will only be granted in cases of extreme emergency or by agreement of the parties.
- 16.3 At the time of the hearing before the Administrative Hearing Officer, the Employer or reporting party may request mediation of the dispute.
- 16.4 During the appeal, the hearing officer will consider:
- a) Records submitted by the City Attorney's Office;
  - b) Written position statements by all parties involved.
- 16.5 At the hearing officer's discretion, these may also be considered to resolve issues of credibility or factual disputes:
- a) Testimonies
  - b) Oral arguments
- 16.6 The hearing officer will reverse the City Attorney's Office decision only if it is determined that the decision is clearly erroneous.
- 16.7 The hearing officer's decision will be the City's final decision without any further right of administrative appeal.
- 16.8 The City Attorney's Office will notify the Employer and reporting party of the hearing officer's decision.

- 16.9 Pursuant to Section 1.18 of the City Code, to appeal the hearing officer's decision, the Employer or reporting party may file a petition for writ of certiorari to the Minnesota Court of Appeals as provided by Minn. Stat. §606.01.
- 16.10 The decision of the City Attorney's Office will constitute the City's final decision if there is no further appeal.
- 16.11 Failure of the Employer or reporting party to appeal the City Attorney's Office's decision will constitute failure to exhaust administrative remedies, which will serve as a complete defense to any petition or claim regarding the City Attorney's Office's decision.

#### **Rule 17: Civil Enforcement and Private Right of Action.**

- 17.1 The City may bring a civil action against an Employer for the following reasons:
- a) Non-compliance with a final decision of the City Attorney's Office; or
  - b) Violation of the Ordinance.
- 17.2 If the City Attorney's Office prevails, the City will be entitled to appropriate legal and equitable relief to remedy the violation which may include, and is not limited to:
- a) Payment of lost wages;
  - b) Payment of an additional sum as a civil penalty that does not exceed twice the amount awarded for lost wages;
  - c) Reinstatement in employment and/or injunctive relief; and
  - d) Reasonable attorneys' fees and costs award.
- 17.3 A person who was harmed by a violation of the Ordinance may bring a civil action against an Employer in the district court where the alleged violation happened or where the Employer's principal place of business is located.
- 17.4 The action can be brought to recover all damages recoverable at law, as well as costs and disbursements, and reasonable attorney's fees. The harmed person may also receive other equitable relief as decided by the court.

#### **Rule 18: Effect on other Generous Leave Policies**

- 18.1 Nothing in the Ordinance should be interpreted to discourage Employers from adopting or retaining other leave policies, including accrued ESST policies that provide for greater accrual or use of ESST by Employees, or that extends other protections to Employees.
- 18.2 An Employer is not required to provide additional ESST if it provides Employees ESST under a paid time off policy, other leave policy, or collective bargaining agreement that is sufficient to meet the accrual requirements for ESST as provided by the Ordinance.
- 18.3 Employers may establish a policy that allows Employees to donate unused accrued ESST to another Employee.
- 18.4 Employers may advance ESST to an Employee before it is accrued by the Employee.

#### **Severability**

If any part, term, or provision of these Rules is held by a court of competent jurisdiction to be invalid or unconstitutional, such portion shall be deemed severable and such unconstitutionality or invalidity shall



not affect the validity of the remaining portions of this Rules, which remaining portions shall continue in full force and effect.

### **Priority**

If any part, term, or provision of these Rules is inconsistent with Minnesota State Law or Minnesota Administrative Rules, such portion shall be deemed severable and shall not affect the validity of the remaining portions of these Rules, which remaining portions shall continue in full force and effect.

### **References**

**State law:** <https://www.revisor.mn.gov/statutes/cite/518B.01>

[https://www.dli.mn.gov/sites/default/files/pdf/esst\\_law.pdf](https://www.dli.mn.gov/sites/default/files/pdf/esst_law.pdf)

**City Code:** <https://www.bloomingtonmn.gov/earned-sick-and-safe-leave-essl>