



EARNED SICK AND SAFE TIME ORDINANCE

FREQUENTLY ASKED QUESTIONS

[LINK](#) TO ORDINANCE

GENERAL QUESTIONS ABOUT EARNED SICK AND SAFE TIME ORDINANCE

1. What is the City of Bloomington’s Earned Sick and Safe Time (ESST) Ordinance?

The Earned Sick and Safe Time Ordinance is a law in Bloomington that establishes minimum standards for employers to provide paid time off work for certain types of employees that work in Bloomington. The ESST Ordinance is within the City Code of Ordinances.

2. Why was the Earned Sick and Safe Time Ordinance created?

The Ordinance was created to allow employees time to care for themselves and family members, and to ensure their protection and wellbeing; to safeguard the public welfare, health, safety, and prosperity of the citizens of and visitors to Bloomington; 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; to assist victims of domestic abuse by providing them with job-protected sick and safe time away from work to allow them to receive treatment and to take the necessary steps to ensure their protection and wellbeing.

3. What is Earned Sick and Safe Time (ESST)?

ESST is paid time off that employees may use to care for themselves or family members.

Eligible reasons include:

- Getting care for mental or physical illness, injury, or health condition or preventive medical or health care.
- 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.
- Medical and psychological counseling due to sexual assault, domestic abuse, or stalking

- Relocation, victim services, and other safety planning due to sexual assault, domestic abuse, or stalking
- Seeking a restraining order or legal counsel or participating in a legal proceeding due to sexual assault, domestic abuse, or stalking.

4. When did the Earned Sick and Safe Time Ordinance go into effect?

The Earned Sick and Safe Time Ordinance goes into effect on July 1, 2023. It has been amended twice since it was initially adopted with the most recent amendments effective at the start of 2024.

5. Which type of employers must provide Earned Sick and Safe Time to its employees?

The City of Bloomington, any individual, corporation, partnership, association, nonprofit organization, or group of people are required to provide Earned Sick and Safe Time to each eligible employee working within the Bloomington City limits.

6. Who is considered a family member or member of household?

Family member or member of household means:

- The employee's child, stepchild, adopted child, foster child, adult child, spouse, sibling, parent, stepparent, mother-in-law, father-in-law, grandchild, grandparent, guardian, ward, or domestic partner
- People who currently reside in the employee's home

7. Who is covered by the Ordinance?

Full-time, part-time, and temporary employees who work within the Bloomington City limits for 80 hours or more in a year.

8. Who is not covered by the ESST Ordinance?

Independent contractors, student interns, extended employment program workers, government employees who work for the United States federal government, the State of Minnesota and its offices, departments, agencies, authorities, institutions, associations, societies, the legislature and the judiciary, county, and local governments are not covered by the Ordinance.

9. Are employees of Bloomington Public Schools and public colleges and universities such as Normandale College covered by the Ordinance?

No, but employees of third-party contractors for these public institutions must comply with the Ordinance.

10. Are Bloomington charter schools covered?

Yes.

11. Can employers give employees more time than the amount required by the Earned Sick and Safe Time Ordinance?

Yes, employers may choose to be generous and provide more time than required by the Ordinance.

12. Does an employee have to live in Bloomington to receive Earned Sick and Safe Time?

No, an employee must work within the city limits of Bloomington to receive Earned Sick and Safe Time.

13. What does “accrual” mean?

Accrual describes how something increases or “adds up” (accrues). As time passes and an employee works more hours, the employees accumulate more earned sick and safe time hours. According to the Ordinance, employees accumulate 1 hour of ESST for every 30 hours worked within the city limits of Bloomington.

14. When do employees begin to accrue paid Earned Sick and Safe Time?

Existing employees begin to accrue paid ESST on July 1, 2023, the effective date of the Ordinance. Employees who start work after the effective date of the Ordinance begin to accrue on their starting date of employment.

15. Do employees accrue Earned Sick and Safe Time when on vacation or out sick?

No, the Ordinance does not require the accrual of ESST when an employee is on vacation or out sick. Earned Sick and Safe Time is only accrued when an employee is working.

16. How many hours of Earned Sick and Safe Time can an employee earn in a year?

The employer may not cap accrual at fewer than 48 hours. However, an employer may choose to allow more than 48 hours accrual.

17. Do Earned Sick and Safe Time hours accrue on overtime hours worked?

For an employee who is not exempt from earning overtime compensation under federal and Minnesota wage-hour laws, ESST hours accrue on all hours worked, including overtime hours.

18. How does an exempt employee accrue Earned Sick and Safe Time hours?

Exempt employees (employees who are exempt from overtime pay requirements under the federal and Minnesota wage-hour laws) are presumed to work 40 hours per week for the purposes of ESST accrual. In instances where there is clear evidence that an exempt employee's regular work week is less than 40 hours, ESST accrues based upon that employee's actual regular work week.

19. How does an employer comply with the ESST Ordinance if offering unlimited ESST?

A sentence on the pay statement stating that there is unlimited ESST offered would suffice. It could also be stated in orientation materials and the employee handbook.

20. How do I know if my employee's work location(s) is located within the geographical boundaries of the City of Bloomington?

You can visit the following [link](#) and enter the work location address to determine if it is within the geographic boundaries of the City of Bloomington:

21. Can an employer require advance notice of an employee's intention to use Earned Sick and Safe Time?

Yes and No. An employer may require not more than 7 days advance notice of an employee's intention to use ESST if the need for use is anticipated or expected. Advance notice is not required if the need for use is unexpected.

22. Is the employer allowed to require documentation showing the need to use Earned Sick and Safe Time?

Yes, an employer is allowed to require documentation showing the need to use ESST if an employee is going to be absent for more than 3 consecutive days. 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 City Code § 23.07(b) (1), (2), (5), or (6). 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.

Reasonable documentation for safe time must communicate:

- 1) that the Employee or the Employee's Family Member is experiencing domestic violence, Sexual Assault, or Stalking; and
- 2) that the time as taken was for a purpose covered by City Code § 23.07(b)(3)

Reasonable documentation the Employer must accept includes court records and documentation signed by: a volunteer or employee of a victim services organization, an antiviolence counselor, an attorney, or a police officer.

Scenario: Judy calls in sick because of illness and states that she plans on visiting a medical clinic for diagnosis and treatment. May her employer require documentation from this health care provider? No, because Judy has not been away from work for more than three consecutive workdays. However, Judy may voluntarily provide a doctor's note if she chooses, and her employer may request that upon her return to work she state in writing that she used ESST for a permissible purpose. Employers must maintain the confidentiality of sensitive information shared by an employee.

23. Can an employer credit Earned Sick and Safe Time hours for employees on a weekly, monthly, or quarterly basis etc. ahead of hours worked?

Yes, an employer may calculate and credit accrual ahead of hours worked. However, employers must ensure that a sufficient number of hours are given. Failure to credit enough hours in advance (at least one hour per 30 hours worked, up to yearly and overall caps of at least 48 and 80 hours) must be remedied within one month to avoid a violation of the ESST Ordinance.

24. At what rate does an employee accrue Earned Sick and Safe Time?

The minimum rate at which an employee accrues ESST is one hour for every 30 hours worked in the City.

Scenario: Julian has worked 120 hours. How many ESST hours has he accrued? Julian has accrued four ESST hours. After 150 hours worked, he will accrue a fifth ESST hour.

25. How frequently must an employer calculate and record Earned Sick and Safe Time hours?

Employers may calculate and record ESST hours at the same frequency as the employer's other typical payroll practices (e.g., per pay period, weekly, bi-weekly, twice per month etc.), as long as it is recorded at least once per month.

26. Do employees accrue Earned Sick and Safe Time in hour-unit increments or fraction of an hour increments?

It is up to the employer whether ESST accrues in increments of whole hours or fractions of an hour. Upon completion of every 30 hours worked, an employee accrues at least one additional hour of ESST. Employers may exceed this minimum standard by recording time in fractions of an hour.

Scenario: Employee Aamina has worked 80 hours. How many hours of ESST has she accrued? She has accrued at least two ESST hours. Her employer may choose to record additional time in fractions of an hour. If Aamina continues, at the end of 1440 hours worked in Bloomington, she has accrued at least 48 (1440/30) hours of ESST, recorded at least monthly.

27. Does the ESST Ordinance cover those employees under the age of 18?

Yes.

28. How does an employee who is paid based on productivity accrue Earned Sick and Safe Time hours?

When an employee is compensated based on productivity, accrual of sick time is measured by the actual length of time spent performing work.

CARRYOVER AND CAPS

29. Can I carry over unused accrued Earned Sick and Safe Time into the following year?

Yes, unused accrued ESST time can be carried over into the following year, but an employer is not required to allow the accrual of more than 80 hours.

Scenario: Employee Anthony accrued 30 hours by the end of the first benefit year of his employment. However, he did not use any. His employer must carry-over those 30 hours into the following benefit year. Employee Anthony may then accrue additional hours.

30. What does “calendar year” mean?

Any consecutive 12-month period of time as determined by an employer. Most employers will find it helpful to use one of the following:

- Year that runs from Jan. 1 to Dec. 31
- Tax year
- Fiscal year
- Year running from an employee’s anniversary date of employment

Whichever method an employer chooses to measure the calendar year, once established it must be communicated to employees and applied similarly for all employees. Employers must use a consistent measuring period from year to year and from employee to employee.

31. Can an employer set a limit on how many ESST hours an employee can accrue?

Yes. Employers may set a cap on each employee’s accrual. Employers must allow each employee to accrue at least 48 hours per year, carried over from year to year, until an 80-hour maximum accrual cap is reached. These two limits operate in tandem. These limits of 48 hours per benefit year and a maximum accrual cap of 80 hours per employee may be higher if an employer chooses, but not lower.

Scenario: Lyndale Consultants limits its employees’ accrual of ESST to the minimum standard of 80 hours. Anthony accrued 30 ESST hours by the end of the first benefit year of his employment. These 30 hours carried over into the second benefit year, during which he accrued an additional 48 hours. What happens during the third benefit year? Anthony accrues an additional two ESST hours (30 hours + 48 hours + 2 hours) before stopping at a limit of 80 hours. He must use some accrued hours in his “bank” of 80 hours before accruing more ESST.

32. Once an employee reaches their benefit year cap or maximum accrual cap of Earned Sick and Safe Time hours (if an employer has set one), do they receive credit for additional hours worked?

No. Once an employee reaches the yearly cap of 48 hours, they no longer accrue ESST hours for that benefit year. Once an employee reaches 80 hours through carry-over and accrual, they no longer accrue additional hours (even if the yearly cap is not yet met) until they use some of the hours they have “in the bank.” These two limits, 48 hours per benefit year and a maximum accrual cap of 80 hours, operate in tandem. The limits may be higher if an employer chooses, but not lower.

Scenario: Employee Anthony reached his overall accrual cap of 80 hours. Later, Anthony uses eight hours, reducing his bank to 72 (80 – 8). Upon his return to work, he begins accruing again. Following an additional 240 hours worked (240/30 = 8), he replenished his bank back up to 80 hours (72 +8).

33. May employers who use a January through December benefit year prorate the accrual cap for July 1, 2023, through December 31, 2023?

No.

34. Can employers count the paid sick and safe time they provided employees, or that employees accrued and used between January 1, 2023, and July 1, 2023?

Yes.

Scenario: 98th St. Robotics provides employees with 48 hours of ESST every January 1. Employee Jen used all 48 hours in June of 2023. She does not get to accrue additional hours until January 1, 2024.

FRONT-LOADING OF HOURS

See City Code § 23.06(b)(5) for more information.

35. What is “front-loading”?

“Front-loading” is an alternative method of accrual for employers who want to reduce the calculations and record keeping required of per-pay-period (e.g. weekly, bi-weekly, twice-a-month or monthly) accrual. This option allows employers to record accrual only once per year and avoid carryover from year to year. Employees get immediate access to the front-loaded hours at the beginning of each benefit year and do not accrue hours throughout the year.

36. May an employer front-load yearly Earned Sick and Safe Time hours for part-time employees?

Yes. However, to avoid carryover, an employer must front-load an employee at least 80 hours (or 48 hours during the first benefit year) at the beginning of every year. Alternatively, employers may provide 48 hours per year and carryover any unused hours into subsequent years (subject to an 80-hour overall cap).

37. May an employer treat part-time and full-time employees differently, for example, front loading Earned Sick and Safe Time for some but not others and not violate the ESST Ordinance?

Yes. As long as an employer provides all employees at least what the employees are entitled to under the Ordinance, an employer may provide some but not other employees more or different benefits.

38. Are there alternative accrual options other than “front-loading” available to employers?

Yes. Employers may provide ESST hours in advance of hours worked while continuing to provide the carryover of each employee’s unused ESST hours from the previous year (subject to an 80-hour overall cap). If from January 2024 through June 2024, an employee was front-loaded ESST hours – i.e. a type of time that can be used for all ESST purposes, e.g. sick time, vacation, or PTO etc. – the employer may count that towards accrual for purposes of compliance for an entire benefit year 2023. Alternatively, employers may carryover any unused hours into subsequent years (subject to an 80-hour overall cap) and provide ESST hours in advance of hours worked (e.g. 48 at the beginning of each benefit year).

Scenario: Mumtaz is a business owner who employs Sara and provides ESST hours per year. At the beginning of Sara’s employment, Mumtaz provides Sara 48 hours. Sara does not use any of these hours and the hours carry-over into the next benefit year. At the beginning of the second benefit year, Mumtaz adds an additional 32 hours, up to the 80 hour overall cap. During the second benefit year, Sara uses 70 hours. At that point in time, Mumtaz could provide Sara 16 hours (before reaching the 48 hours benefit year cap) or allow Sara to accrue one hour for every 30 hours worked (up to the 48 hours benefit year cap).

39. Can an employer credit Earned Sick and Safe Time hours for employees on a weekly, monthly, or quarterly basis etc. ahead of hours worked?

Yes, nothing in the ESST Ordinance prevents employers from allowing an employee to access ESST hours in advance of hours worked. An employer may calculate and credit accrual ahead of hours worked. However, employers must ensure that a sufficient number of hours are given. Failure to credit enough hours in advance (at least one hour per 30 hours worked, up to yearly and overall caps of at least 48 and 80 hours) must be remedied within one month to avoid a violation of the ESST Ordinance.

Scenario: Full-time (40 hour per week) employee Aamina has completed 1440 hours of work in Bloomington during the first nine months of the benefit year. Aamina has thus far banked at least 48 (1440/30) hours of ESST. Aamina’s employer could have planned ahead of time the schedule for allowing Aamina access to accrued ESST hours. For example, it may record six hours per month for eight months; three hours biweekly (or twice-per-month) for eight months; or five and one third hours per month for nine months. In comparison, four hours recorded per month evenly across the entire benefit year would fail to provide Aamina access her accrued time soon enough. Her employer’s compliance depends upon both the amounts and frequency with which it allows Aamina access.

USE OF EARNED SICK AND SAFE TIME

40. Is there a period of time allowed at the beginning of employment when an employee may not use Earned Sick and Safe Time?

No.

41. What is “preventive medical or health care”?

Preventive medical or health care is routine health care such as screenings, vaccinations, checkups, and patient counseling to prevent illnesses, disease, or other health problems. Preventive care may include things like dentist or eye doctor appointments.

42. May an employee use Earned Sick and Safe Time following the birth of a child?

Yes, an employee may use ESST hours during any period of physical or mental recuperation after she gives birth. An employee may also use ESST to care for a covered family member after the family member gives birth. An employee may use ESST to care for a covered child’s need for medical diagnosis, care, or treatment of an illness, injury, or health condition, or preventive medical or physical care.

43. May Earned Sick and Safe Time hours be used to care for an adult over the age of 18?

Yes. No age restriction applies to the care of a family member.

44. May an employee use Earned Sick and Safe Time hours at the same time as other protected time under other state or federal laws?

Yes. Nothing prevents an employee from using ESST hours concurrently (at the same time) with the Family and Medical Leave Act (FMLA) or other protected time to mitigate wage

loss. Hours used by an employee as ESST may also be counted by an employer toward concurrent entitled time under federal or state law, such as the FMLA. Federal and state laws, such as the FMLA, Americans with Disabilities Act, or the Minnesota Human Rights Act, take 11 precedence when they require employers to do more than the Bloomington ESST Ordinance. For more information concerning the FMLA, visit the U.S. Department of Labor website at <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

45. Is there a cap on the amount accrued of Earned Sick and Safe Time hours that an employee may use?

An employee may use all of the ESST hours that they have banked at any given time. There are no limits on use allowed in the ESST Ordinance.

Scenario: Employee Sara has accrued 80 ESST hours that carryover to a new benefit year. She had surgery and requests to take off two weeks—all of the ESST she has banked. May her employer impose restrictions on how much ESST Sarah uses? No. All of her banked hours are available for her to use and she may accrue additional hours (up to yearly and overall caps) to replace them after their use. She can use all 80 hours to recuperate from her surgery. During the new benefit year, Sara uses 70 hours. At that point in time, her employer could provide Sara 16 hours (before reaching the 48 hours benefit year cap) or allow Sara to accrue one hour for every 30 hours worked (up to the 48 hours benefit year cap).

PAID TIME OFF AND VACATION PLANS

46. If an employer offers a Paid Time Off (PTO) plan or other sick or vacation time, does that satisfy the requirements of the Ordinance?

The name of an employer's paid time off plan or other time policy does not matter. A PTO plan (or any other type of time, including sick or vacation) can satisfy the ESST Ordinance requirements if the plan: (1) provides employees at least as much time as required by the ESST Ordinance; (2) allows employees to use the time for all of the reasons and under the same conditions required by the ESST Ordinance; and (3) lists on employee pay statements the time accrued and available.

Scenario: An employer offers 80 hours of PTO per year. Does it need to begin referring to its PTO as "Earned Sick and Safe Time"? No. The law does not require explicit reference to any employee programs or time as "Earned Sick and Safe Time". The name used by employers does not matter. The amounts and conditions of use for time off work determine whether or not a PTO policy complies with the ESST Ordinance. For example, advance

notice requirements for approval of PTO when used for vacation cannot be applied in a case of sudden illness.

47. When does an employer need to offer additional Earned Sick and Safe Time hours?

If an employer offers PTO or vacation days that may be used for any purpose and under the same conditions outlined in the ESST Ordinance, at a rate of at least 1 hour per thirty hours worked, the employer is not required to offer additional time. However, it may choose to do so. An employer may also combine amounts of sick time and vacation or PTO it offers to cumulatively meet the minimum threshold amounts required under the Ordinance.

Scenario: An employer offers each of its employees 80 hours paid per year of time off to use for any purpose. The time off is available throughout the benefit year. Is the employer in compliance with the ESST Ordinance? Yes, the employer complies with the Ordinance, provided that any conditions of use are consistent with the Ordinance.

48. If an employer uses a PTO plan (or any other type of time that encompasses all Earned Sick and Safe Time Ordinance purposes) to comply with the Ordinance, does the employer need to track how an employee uses time and ensure sufficient amounts are used for ESST purposes?

No. Employers must provide access to time that may be used for ESST purposes. An employee who chooses to use this time for other purposes is not entitled to additional ESST. The employer must still list the accrued and available time hours on employee pay statements.

RECORD-KEEPING AND NOTICE REQUIREMENTS

49. What records must employers retain?

Employers may adopt or retain any record-keeping policies or practices, as long as their records indicate:

- For non-exempt employees, hours worked;
- Hours of time available for Earned Sick and Safe Time purposes; and
- Hours of time used

Employers must retain these records for three years in addition to the current year and allow access to the employee and/or the Bloomington City Attorney's Office upon request.

50. Are employers required to inform employees of their rights under the Earned Sick and Safe Time Ordinance?

Yes. As of July 1, 2023, employers must display a Bloomington-specific workplace poster in a conspicuous and accessible location within each of their facilities in Bloomington. The poster should be displayed where employees can easily read it. Employers must display the poster in English and in each of the primary language(s) spoken by employees at the particular workplace. An employer that provides an employee handbook or any orientation materials to its employees must also include a copy of the workplace poster. The required workplace poster is available for download here: <https://blm.mn/ESST>

51. What are the requirements for notifying employees about their balance of available Earned Sick and Safe Time hours?

Under the ESST Ordinance, employers must provide this information on employee pay statements/stubs.

USAGE MONITORING AND RESTRICTIONS

52. May employers require employees to provide advance notice of Sick or Safe Time absences?

It depends. For time that is foreseeable, employers may request notice ahead of time – or as early as possible – but may not require such notice more than seven days in advance. For unforeseeable time, an employer may require notice as soon as is practicable.

Scenario (a): Employee Leif works for Commercial Cleaning Inc., which typically requires its employees to provide at least 24 hours advance notice of any absence. Two hours prior to Leif’s shift, a family member calls Leif from the hospital regarding a serious car accident involving Leif’s son. May Leif use ESST in these circumstances? Yes. In this situation, Leif need not comply with Commercial Cleaning Inc.’s 24-hour advance notice policy; rather, he should provide Commercial Cleaning Inc. with notice as soon as practicable under the circumstances. Refusing to allow Leif’s ESST use during this medical emergency would constitute a violation of the ESST Ordinance.

Scenario (b): Jackson owns Enterprise and employs Bernice. Enterprise has a policy requiring at least seven days advance notice (or as soon as practicable) from its employees of ESST use or other types of time. Bernice schedules a well child check-up for her daughter several months in advance but forgets to inform Enterprise until two days before the appointment. Can Enterprise deny Bernice’s request to use ESST or refuse to compensate Bernice for work hours scheduled during her daughter’s doctor’s appointment?

Yes. The ESST Ordinance allows employers to maintain a policy requiring advance notice, when foreseeable. Health care visits scheduled in advance are foreseeable.

53. How does an employee request use of Earned Sick and Safe Time hours?

The method for notifying an employer of a need to use ESST hours depends mostly on the employer's practices and policies. The ESST Ordinance does not replace an employer's reasonable expectations for communication from its employees.

54. What are some examples of reasonable procedures and methods for notifying an employer of an absence?

Examples of reasonable procedures include instructing the employee to call a designated phone number to time a message, following a uniform call-in procedure, or using another reasonable and accessible means of communication identified by the employer. An employer must consider the individual facts and circumstances of each situation in determining at what point it is practicable for an employee to give notice.

55. Must an employee specifically ask to use "Earned Sick and Safe Time"?

No. An employee is not required to specifically ask for "ESST" or reference the ESST Ordinance when requesting ESST hours. Employees simply must state their need for an absence for a reason covered by the Ordinance. It can be as simple as "I am sick and need to miss my shift today." If an employee calls in sick, the employer should assume the employee intends to use accrued ESST, unless the employee asks the employer to consider another arrangement.

56. May an employer require an employee to provide specific details about the reason for use?

Generally, no. An employer may not require an employee or a health care provider to specify the detailed nature of the employee's or the employee's family member's injuries, illness, condition, services, or emergency, except as allowed by other laws (e.g. Family Medical Leave Act).

57. Does an employer have to keep medical information about employees confidential?

Yes. An employer must keep confidential health and safety information about an employee or an employee's family member obtained solely because of the ESST Ordinance unless the employee permits disclosure or disclosure is required by law.

58. Does an employee have to provide documentation for use of Earned Sick and Safe Time if there is clear evidence of misuse?

Yes, an employer may not link approval or compensation to the employee providing documentation from a third party such as a medical professional if clear evidence of misuse exists.

59. What is “clear evidence” of misuse by an employee?

“Clear evidence” of Earned Sick and Safe Time misuse shows that an employee is highly likely to have engaged in an activity that is not consistent with the employee recuperating or otherwise using the time for a legitimate ESST purpose. It results in an employer’s reasonable, good faith suspicion. It is determined on a case-by-case basis. Examples include but are not limited to: (a) using ESST hours on days when an employee’s request for vacation has been denied, (b) a contemporaneous social media photo or post of the employee that conflicts with their stated reason for using ESST, or (c) a consistent pattern of circumstantial evidence. Note: An employee who uses ESST hours for purposes other than those authorized under the ESST Ordinance is not protected by the Ordinance.

60. May an employer require a minimum amount of time per use?

Yes. An employer may require its employees to use a minimum of up to four hours per occurrence. This minimum-amount-per-use may be set at any amount up to four hours but may not exceed four hours.

Scenario: 98th Street Grill requires its employees to use a minimum of four ESST hours per occurrence. Employee Anh Nguyen is scheduled to work back-to-back shifts. She has 20 hours of ESST available and plans on being away from work that day at noon for two hours to attend her daughter’s doctor appointment. She gives her employer proper advance notice of the appointment. May she use ESST for just two hours? No, 98th Street Grill may require Employee Anh Nguyen to use a minimum of four ESST hours for her daughter’s doctor appointment. She should return to work at four o’clock.

61. What if an employee does not have the minimum number of hours of ESST available that the employer requires to be used per occurrence?

In that situation, the employer can only require that the employee use what they have available.

Scenario: Mississippi Corner Store requires its employees to use a minimum of four Earned Sick and Safe Time hours per occurrence. Employee Abdullah has two hours of ESST available and calls a half hour before he is scheduled to work to say he feels ill and will be

late. Abdullah wants to use one hour of ESST. May Mississippi Corner Store deny his ESST request because he does not have four hours available? No, but they can require him to use both of his two hours that he has available.

62. May an employee trade shifts or work alternative hours instead of using Earned Sick and Safe Time?

Yes. With mutual employer and employee consents, employees may suggest working additional hours or trading shifts instead of using ESST hours. However, the employer may not unilaterally require an employee to work an alternate shift or reduce normally scheduled hours to avoid use of ESST hours.

63. Are employees required to find their own replacement when they use Earned Sick and Safe Time?

No. An employer may not require an employee to find a replacement to “cover a shift” as a condition for using ESST.

64. May an employer have a policy that permits employees to donate unused Earned Sick and Safe Time hours to other employees?

Yes, as long as the policy is voluntary.

65. May employees use Earned Sick and Safe Time hours during overtime that they were scheduled to work?

Yes. An employer must allow employees to use ESST for all hours they are scheduled to work, including any mandatory regular or overtime hours. However, ESST hours are paid at the employees’ regular rate of pay.

66. When, because of last-minute shift scheduling changes, may an employer reject an employee’s use of Earned Sick and Safe Time?

If an employee requested a shift occurring within twenty-four (24) hours of the employee’s request, then an employer may reject use of sick or safe time during that shift. Otherwise, employers must allow legitimate ESST use for all hours scheduled to be worked.

Scenario: On Monday, Anthony’s employer offers him an extra shift to cover a co-worker’s shift occurring on Thursday. Anthony accepts. On Thursday, Anthony’s daughter becomes ill and must stay home from school. May Anthony use ESST hours to care for his daughter? Yes, Anthony did not proactively request the shift (it was offered to him and he accepted

it). Furthermore, this communication did not occur within twenty-four (24) hours prior to the shift. In comparison, if Anthony (1) normally exercises control of his work schedule and (2) volunteered to work a shift within twenty-four (24) hours, then his employer may deny his use of ESST.

67. May an employer deny use of ESST for particularly “critical” employees or during times of heightened importance?

No. There is no exemption in the ESST Ordinance for “critical” employees or exigent business circumstances. Employers should encourage consistent employee attendance and plan for the occurrence of emergency staffing situations regardless of the ESST Ordinance.

RATE OF PAY FOR EARNED SICK AND SAFE TIME HOURS

68. What is the Earned Sick and Safe Time rate of pay for an employee who is paid an hourly wage?

Compensation for the use of ESST hours for employees who are paid an hourly wage is the employee's hourly wage (including shift differentials where applicable).

69. Is an employee entitled to be compensated for tips, commissions, bonuses, or overtime that might have been lost while they were off of work using Earned Sick and Safe Time?

No. An employee is not entitled to lost tips, commissions, bonuses, or overtime payments (i.e. one and a half times the regular rate or more) during use of ESST hours. However, the employer must pay the employee at least the legal minimum wage for ESST hours used.

70. How does an employer calculate hourly Earned Sick and Safe Time compensation for a salaried employee who has no set schedule?

Employees who are paid an annual salary and are exempt from overtime laws, as provided under the Fair Labor Standards Act and/or Minnesota wage and hour laws, are deemed to work 40 hours a week for purposes of accruing and using ESST. If any employee normally works less than 40 hours a week, then they will accrue and use ESST based upon their normal work week. Employers have no obligation to pay an employee more than their full salary for use of ESST.

71. If an employee has two different jobs for the same employer, what should the rate of pay be for Earned Sick and Safe Time hours used?

The rate of pay for the employee's use of ESST should be the rate of pay for the job/shift the employee was scheduled to work.

72. If an employee is paid based on production instead of time, at a "piece rate," what should the rate of pay be for Earned Sick and Safe Time hours used?

If rate of pay is determined by a fixed "piece rate" for each unit produced or action performed regardless of time, employers must calculate in good faith an average or typical hourly rate based on the employee's comparable recent earnings history for similar jobs or shifts.

73. How does an employer compensate an employee who uses Earned Sick and Safe Time hours for a shift of indeterminate length?

An employer may determine reasonable payment based on hours worked by similarly situated employees who worked that same (or similar) shifts in the past or calculate an average or typical length of shift based on the employee's work history.

74. How soon must an employee be compensated for use of Earned Sick and Safe Time?

ESST use must be compensated in the same manner and at the same time as the employee would have received compensation for hours worked.

75. Can employers "cash out" or otherwise raise employee wages in lieu of providing Earned Sick and Safe Time?

ESST rights and responsibilities may not be waived or cashed out to discourage use. However, ESST hours may be paid (or cashed out) in advance of use if the equivalent time off remains available for use unpaid. Moreover, if an employer chooses to frontload ESST hours on a yearly basis it may choose to cash out unused hours at the end of each year.

76. Are employers required to pay out unused Earned Sick and Safe Time at the end of an employment relationship?

No. Nothing in the ESST Ordinance requires employers to allow employees to pay out unused ESST hours at the time the employment relationship is terminated. However, employers may choose to do so.

SCOPE OF COVERAGE AND APPLICABILITY

77. When is an employee covered by the Earned Sick and Safe Time Ordinance?

Employees who work at least 80 hours in a benefit year within the geographical boundaries of Bloomington are covered under the ESST Ordinance, regardless of the location of the employer. Employees who only drive through the city are not covered even though this occurs during an employee's work hours. An employee is required to accrue ESST only while physically located within Bloomington and performing work for the employer. Find the City of Bloomington geographical boundaries here:

<https://blmgtmn.maps.arcgis.com/apps/webappviewer/index.html?id=daa0b15210d248a0919abb0ee9bc7fdb>

Find out if an address is inside or outside of Bloomington here:

<https://gis.hennepin.us/Property/Map/Default.aspx>

78. Does an employee always accrue Earned Sick and Safe Time while working from home?

No. Employers may restrict an employee's accrual of ESST to the time that the employee performs work within the City of Bloomington. An employer may voluntarily allow accrual of ESST hours regardless of an employee's geographic location if it chooses.

79. Are employers required to permit the use of Earned Sick and Safe Time hours when an employee is scheduled to perform work outside of Bloomington?

No. An employee has a right to use banked ESST hours for covered purposes only when scheduled to perform work within the city limits of Bloomington. An employer may allow use of ESST hours regardless of where an employee is scheduled to work if it chooses.

80. How does an employer know how much time an employee spends working within the City limits?

An employer may make a reasonable estimate of an employee's time spent working in the City for purposes of Earned Sick and Safe Time eligibility, accrual, and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, delivery addresses and standard estimated travel times, or historical averages. Smart phone apps also exist for the purpose of GPS location and payroll time tracking.

81. Are nonprofit employers covered under the Earned Sick and Safe Time Ordinance?

Yes.

82. Is the construction industry exempt?

No. However, employers in the construction industry may comply with the ESST Ordinance by paying employees or registered apprentices the applicable prevailing wage rate as calculated by the Minnesota Department of Labor and Industry. Visit <http://www.dli.mn.gov/lis/prevwage.asp> for more information.

83. Are employees covered by the terms of collective bargaining agreements exempt?

No.

84. If an employer contracts with a temporary staffing agency or other type of joint employer, which entity is responsible under the Earned Sick and Safe Time Ordinance to meet the ESST obligations to employees?

More than one entity may be considered an employee's "employer" under the ESST Ordinance and, if so, each has an independent obligation to ensure that the Ordinance requirements are met. These "joint employers," may include a staffing agency or professional employer organization and a client, for example. Joint employers may agree between them which will monitor their collective compliance with the Ordinance. However, any such assignment of responsibility does not affect the rights of employees under the Ordinance. An employee is not entitled to duplicative ESST from each "joint employer."

Note: Joint employers may exist where more than one person or entity directly or indirectly or through an agent or any other person or entity, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee. The duration of the work, control over work or working conditions, location of work, and repetitive and rote nature of work may indicate the existence of a joint employment relationship within the meaning of the ESST Ordinance.

85. When one employee works at different jobs for separate, unrelated employers, does each employer have to provide Earned Sick and Safe Time?

Yes. Each employment relationship creates rights and responsibilities under the ESST Ordinance.

86. Does the Earned Sick and Safe Time Ordinance require employers to provide ESST to independent contractors?

No. However, merely labeling someone as an "independent contractor" does not necessarily relieve the employer of its ESST obligations. Consistent with Minnesota law, whether a person is an employee or independent contractor is determined by a variety of facts including the extent to which the independent contractor retains supervision, direction, and control over the work and the means to complete it. For more information on how the State of Minnesota similarly reviews issues relating to independent contractor status, visit the Minnesota Department of Labor and Industry webpage at <http://www.dli.mn.gov/WC/IndpCont.asp>.

87. Does the Earned Sick and Safe Time Ordinance cover employees regardless of their immigration status?

All employees who work in Bloomington – no matter their status under federal immigration law – have legal rights under the Bloomington ESST Ordinance. The Bloomington City Attorney’s Office will process an employee's report of suspected violation without regard to their immigration status. An employee filing a complaint will not be questioned about their or their immigration status.

88. Do employees who time and return (seasonal, rehires, etc.) get to keep their accrued Earned Sick and Safe Time hours?

If an employee is rehired within 180 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. If the employee’s break in employment is more than 180 days, the ESST Ordinance does not require the employer to reinstate accrued and unused ESST hours. 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.

89. If ownership of an employer changes, what happens to an employee’s banked Earned Sick and Safe Time hours?

If an employee remains employed with the new employer, the employee retains banked ESST hours. This new employer must allow its employees to use the banked ESST hours.

90. If an employee is transferred from a part-time position to a full-time position or vice versa at the same employer, do they retain their accrued ESST hours?

Yes.

91. If an employee is transferred to another division or location of the same employer, is the employee entitled to Earned Sick and Safe Time hours that were banked at the previous location?

Yes. The employee gets to keep these hours and may use all banked ESST hours when performing work within the city limits of Bloomington.

92. How can employees and employers confirm whether or how the law applies to them?

Employers and employees can contact the Bloomington City Attorney's Compliance

Division in the following ways:

Phone: 952-563-8753

Email: ESST@bloomingtonmn.gov

Website: <https://blm.mn/ESST>

In-Person/Mail: Legal Department – Compliance Division, 1800 West Old Shakopee Road, Bloomington, MN 55431

ENFORCING THE EARNED SICK AND SAFE TIME ORDINANCE

93. How will the Earned Sick and Safe Time Ordinance be enforced?

Enforcement of the ESST Ordinance is the responsibility of the Bloomington City Attorney's Office. Enforcement is complaint based; however, it also has broad authority to proactively investigate possible violations and issue fines as necessary to gain compliance. As in other types of labor law enforcement, compliance reviews and investigations may be utilized to identify all affected employees and protect the anonymity of complainants. Administrative fines will be imposed to make employees whole. Repeat or intentional violators will receive harsher penalties. Violations of the ESST Ordinance may also result in license sanctions, up to and including revocation of a business license by the City of Bloomington. All legal options and penalties to gain compliance, including enforcement in a court of law, will be considered.

Scenario: An employer has a policy or practice of not providing or refusing to allow the use of sick time. How would this be remedied by the Department? The finding that an employer has such a policy or practice constitutes a violation of the law for each and every employee affected by the policy.

94. As a complainant, can I provide my name and contact information to the City Attorney's Office but have that information not be revealed to anyone else?

The City Attorney's Office will seek to protect the name and contact information of a complainant, but total confidentiality is not always possible.

95. What happens if an employer's written policies include Earned Sick and Safe Time but, in practice, the employer's actions dissuade employees from using it?

Retaliation against an employee for exercising or attempting to exercise any rights available to them under the ESST Ordinance is strictly prohibited. Retaliation is any act that would dissuade a reasonable employee's use of ESST. Material changes in job classification, duties or hours, formal disciplinary action such as documented warnings or suspension, the accumulation of points under an attendance point system, or employment termination may be considered retaliatory. Aggressive enforcement to protect employees' rights will be pursued in these types of cases.

96. What may an employer do in cases of suspected misuse?

In cases of suspected Earned Sick and Safe Time misuse, an employer may review future use with heightened scrutiny. An employee who uses ESST hours for purposes other than those authorized under the ESST Ordinance is not protected by the Ordinance.

97. May an employer discipline an employee who misuses Earned Sick and Safe Time?

Yes. An employee who uses ESST hours for purposes other than those authorized under the ESST Ordinance is not protected by the Ordinance.

98. An employer has an absence control policy that issues an "occurrence point" for each absence, including Earned Sick and Safe Time absences. Is that allowed?

No. Employers are allowed to have absence-control or discipline policies but may not count ESST absences negatively within those policies. Additionally, an employer may not take an employee's legitimate ESST use into account when rating that employee's attendance record for the purposes of awarding a benefit, such as a raise, premium or bonus. Such actions would constitute unlawful retaliation.

99. Can an employee be treated differently in any way (bonuses, pay) based on their ESST usage?

No, it would be illegal interference with, and discouragement of the use of, an employee's ESST rights for an employer to treat the employee differently based on the usage of accrued ESST.

Scenario: Melissa's employer does not pay an employee for a holiday unless they work the work days immediately preceding and following the holiday. Melissa misses the day after a holiday due to a valid use of her accrued ESST. The employer must pay her for the holiday.

100. Who do I contact if my question is not answered here?

Employers and employees can contact the Bloomington City Attorney's Compliance Division in the following ways:

Phone: 952-563-8753

Email: ESST@bloomingtonmn.gov

Website: <https://blm.mn/ESST>

In-Person/Mail: Legal Department – Compliance Division, 1800 West Old Shakopee Road, Bloomington, MN 55431

