

Answering the Toughest Paid-Sick Leave Questions in the Twin Cities

Brian R. Walsh

Minneapolis Dept of Civil Rights
Minneapolis

Grant T. Collins

Felhaber Larson
Minneapolis

Minnesota CLE's Copyright Policy

Minnesota Continuing Legal Education wants practitioners to make the best use of these written materials but must also protect its copyright. If you wish to copy and use our CLE materials, you must first obtain permission from Minnesota CLE. Call us at 800-759-8840 or 651-227-8266 for more information. If you have any questions about our policy or want permission to make copies, do not hesitate to contact Minnesota CLE.

All authorized copies must reflect Minnesota CLE's notice of copyright.

MINNESOTA CLE is Self-Supporting

A not for profit 501(c)3 corporation, Minnesota CLE is entirely self-supporting. It receives no subsidy from State Bar dues or from any other source. The only source of support is revenue from enrollment fees that registrants pay to attend Minnesota CLE programs and from amounts paid for Minnesota CLE books, supplements and digital products.

© Copyright 2018

MINNESOTA CONTINUING LEGAL EDUCATION, INC.

ALL RIGHTS RESERVED

Minnesota Continuing Legal Education's publications and programs are intended to provide current and accurate information about the subject matter covered and are designed to help attorneys maintain their professional competence. Publications are distributed and oral programs presented with the understanding that Minnesota CLE does not render any legal, accounting or other professional advice. Attorneys using Minnesota CLE publications or orally conveyed information in dealing with a specific client's or other legal matter should also research original and fully quoted sources of authority.

TABLE OF CONTENTS

I. Introduction..... 1

II. Comparison Between MPLS and STP Ordinances..... 2

III. Tough Sick Leave Questions. 12

 A. Round 1..... 12

 B. Round 2..... 12

 C. Round 3..... 12

 D. Round 4..... 12

 E. Hypo # 1..... 13

 F. Round 5..... 13

 G. Round 6..... 13

 H. Round 7..... 14

 I. Round 8..... 14

 J. Round 9..... 14

 K. Hypo #2..... 14

 L. Hypo #3..... 14

 M. Round 10..... 15

 N. Round 11..... 15

 O. Hypo #4..... 15

 P. Hypo #5..... 15

 Q. Hypo #6..... 16

 R. Hypo #7..... 16

IV. Sample Handbook Notices..... 16

 A. Minneapolis Handbook Notice. 16

 B. St. Paul Handbook Notice..... 17

V. Sample Unlimited Leave Policy. 18

VI. Sample Sick Leave Policy. 18

I. INTRODUCTION.

On May 27, 2016, the City of Minneapolis passed Minneapolis Sick and Safe Time Ordinance, Minneapolis Code of Ordinances (“MCO”) Title 2 Chapter 40. On September 7, 2016, the City of St. Paul passed the Earned Sick and Safe Time Ordinance, St. Paul City Ordinance Title XXIII, Chapter 233.

The Minneapolis Ordinance was challenged by the Minnesota Chamber of Commerce (and others) in *Minn. Chamber of Commerce v. Minneapolis*, 27-cv-16-15051 (Minn. D. Ct. Jan. 19, 2017). District Judge Mel I. Dickstein upheld the City’s authority to issue the ordinance and denied the Chamber’s arguments regarding preemption. Nevertheless, because he concluded that the Chamber was likely to succeed on its extraterritoriality argument, Judge Dickstein enjoined Minneapolis from enforcing its ordinance “*against any employer resident outside the geographic boundaries of the City*”

Both parties appealed the ruling. In *Minn. Chamber of Commerce v. Minneapolis*, 2017 Minn. App. Unpub. LEXIS 840 (Minn. Ct. App. Sept. 18, 2017), the Minnesota Court of Appeals agreed that the City of Minneapolis had the authority to issue the ordinance and that the ordinance was not preempted by state law.

With respect to the temporary restraining order, the court concluded that “district court properly exercised its discretion by temporarily enjoining enforcement of the ordinance against nonresident employers.” The court also refused to clarify the definition of “nonresident employers,” noting that it found the definition to be “sufficiently specific in view of the temporary nature of the injunction and the limited enforcement permitted by the ordinance in its first year.” *Id.* n.1.

The Minnesota Supreme Court denied the Chamber’s petition for review on November 28, 2017. 2017 Minn. LEXIS 724. Thus, the case was remanded back to the district court. On April 11, 2018, the district court heard summary judgment arguments from both the City and the Chamber. Trial is scheduled for August 20, 2018.

In separate litigation involving Minneapolis’ minimum wage ordinance, Judge Susan Burke ruled in *Minn. Chamber of Commerce et al v. City of Minneapolis*, 27-cv-17-17198 that the minimum wage ordinance did not have an improper extraterritorial effect. Judge Burke noted that the minimum wage ordinance applied only to “work actually performed within the city limits of Minneapolis.” In addition, Judge Burke concluded that the Minnesota Court of Appeals “appeared to imply that it was doubtful Petitioners would win that stronger case for extraterritorial reach.”

II. COMPARISON BETWEEN MPLS AND STP ORDINANCES.

| | Minneapolis | St. Paul |
|--------------------------------|---|--|
| Effective Date | <p>July 1, 2017.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.90(a). <p>New employers (other than chain establishments) “operating in their first twelve (12) months after the hire date of the employer’s first employee are required to provide unpaid sick time” After 12 months, the employer must provide paid sick leave. This exemption ends on July 1, 2022.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.90(c). | <p>July 1, 2017 (24 or more employees) or Jan. 1, 2018 (22 or fewer employees).</p> <ul style="list-style-type: none"> ▪ STP § 233.21. <p>New employers may provide unpaid sick leave for the first 6 months, until January 1, 2023.</p> <ul style="list-style-type: none"> ▪ STP § 233.21. |
| Coverage— Generally | <p>“Employee’ means any individual employed by an employer, including temporary employees and part-time employees, who perform work within the geographic boundaries of the City for at least eighty (80) hours in a year for that employer.”</p> <ul style="list-style-type: none"> ▪ Does not include “independent contractors.” ▪ MPLS § 40.40. <p>“‘Employee’ means a person or entity that employs one (1) or more employees.”</p> <ul style="list-style-type: none"> ▪ Definition does not include federal, state, or local government employers. ▪ MPLS § 40.40. | <p>“‘Employee’ means any person who is employed by the employer, including temporary and part-time employees, who perform work within the geographic boundaries of the city for at least eighty (80) hours in a year for that employer.”</p> <ul style="list-style-type: none"> ▪ Does not include “independent contractors.” ▪ STP § 233.02. <p>“‘Employer’ means a person who has one or more employees. . . . An employer includes a person, firm, or corporation that hires temporary employees through an employment service. In the event that a temporary employee is supplied by a staffing agency or similar entity, absent a contractual agreement stating otherwise, that individual shall be an employee of the staffing agency for all purposes of this chapter.”</p> <ul style="list-style-type: none"> ▪ Definition does not include federal, state, or local government employers. ▪ STP § 233.02. |

| | Minneapolis | St. Paul |
|---|---|---|
| Coverage— Construction Contractors | <p>“An employer may opt to satisfy the requirements of this Chapter for construction industry employees by:</p> <p>(1) Paying at least the prevailing wage rate as defined by Minnesota Statutes, Section 177.42 and as calculated by the Minnesota Department of Labor and Industry; or</p> <p>(2) Paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with the Minnesota Department of Labor and Industry.</p> <p>An employer electing this option shall be deemed in compliance with this Chapter for construction industry employees who receive either at least the prevailing wage rate or the rate required in the applicable apprenticeship agreement regardless of whether the employees are working on private or public projects.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(f). | <p>“An employer may opt to satisfy the requirements of this Chapter for construction industry employees by:</p> <p>1. Paying at least the prevailing wage rate as defined by Minnesota Statutes, Section 177.42 and as calculated by the Minnesota Department of Labor and Industry; or</p> <p>2. Paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with the Minnesota Department of Labor and Industry.</p> <p>An employer electing this option shall be deemed in compliance with this Chapter for construction industry employees who receive either at least the prevailing wage rate or the rate required in the applicable apprenticeship agreement regardless of whether the employees are working on private or public projects.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.H. |
| Accrual | <p>“Employees accrue a minimum of one (1) hour of sick and safe time for every thirty (30) hours worked. . . . Sick and safe time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of sick and safe time.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(a), as amended. <p>“Sick and safe time under this chapter begins to accrue at the commencement of employment of the employee or this chapter’s effective date, whichever is later.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(d). <p>“An employer with five (5) or less employees must allow employees unpaid use of accrued sick and safe time.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(h). | <p>“For every 30 hours worked after earned sick and safe time begins to accrue for an employee, the employee shall accrue one hour of earned sick and safe time. Earned sick and safe time shall accrue only in hour-unit increments; there shall be no accrual of a fraction of an hour of earned sick and safe time.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.B. <p>“Employees shall earn and accrue earned sick and safe time at the commencement of employment. For individuals who are employed on the date this ordinance takes effect, accrual shall begin on the date this ordinance takes effect.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.A. |

| | Minneapolis | St. Paul |
|-----------------------------------|---|---|
| Front Loading | <p>“An employer may satisfy this section by providing at least forty-eight (48) hours of sick and safe time following the initial ninety (90) days of employment for use by the employee during the first calendar year, and providing at least eighty (80) hours of sick and safe time beginning each subsequent calendar year.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(e), as amended. | <p>“Employers may satisfy [the accrual] requirement by providing at least 48 hours of earned sick and safe time following the initial 90 days of employment for use by the employee during the first year, and providing at least 80 hours of earned sick and safe time beginning each subsequent year.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.C. |
| Maximum Annual Accrual | <p>“Employees may not accrue more than forty-eight (48) hours of accrued sick and safe time in a calendar year unless the employer agrees to a higher amount.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(a), as amended. | <p>“The maximum number of earned sick and safe time hours an employee can earn in each calendar or fiscal year shall not exceed 48 hours.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.B. |
| Maximum Carryover | <p>“Employers shall permit an employee to carry over accrued but unused sick and safe time into the following year. The total amount of accrued but unused sick and safe time for an employee may not exceed eighty (80) hours at any time, unless an employer agrees to a higher amount.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(c), as amended. | <p>“Employers must permit an employee to accrue up to 80 hours of earned sick and safe time. Employers shall permit an employee to carry over earned but unused sick and safe time into the following year (whether calendar or fiscal year), but time carried over is limited to the aforementioned caps.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.C. |
| Maximum Sick Leave Balance | <p>“The total amount of accrued but unused sick and safe time for an employee may not exceed eighty (80) hours at any time, unless an employer agrees to a higher amount.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.210(c), as amended. | <p>“Employers must permit an employee to accrue up to 80 hours of earned sick and safe time.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.C. |
| Waiting Period | <p>“Employees are entitled to use accrued sick and safe time beginning ninety (90) calendar days following commencement of their employment. After ninety (90) calendar days of employment, employees may use sick and safe time as it is accrued.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(a). | <p>“Employees shall be entitled to use earned sick and safe time 90 calendar days following the commencement of their employment. After 90 calendar days of employment, employees may use earned sick and safe time as it is accrued.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.A. |
| Limits on Usage | None. | None. |

| | Minneapolis | St. Paul |
|---|--|---|
| Permissible Uses –Employee | <p>“[A]n employee’s: a. mental or physical illness, injury, or health condition; b. need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or c. need for preventive medical or health care”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(1). | <p>“An absence resulting from an employee's own mental or physical illness, injury, or health condition; to accommodate the employee's 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 care”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.1. |
| Permissible Uses –Family Members | <p>“[T]he care of a family member: a. with a mental or physical illness, injury, or health condition; b. who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or c. who needs preventive medical or health care”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(2). <p>“‘Family Member’ means the employee’s child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, guardian, ward, members of the employee’s household, or registered domestic partner as defined in Minneapolis Code of Ordinances Chapter 142.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.40. | <p>“To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care for a family member who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or care for a family member who needs preventive medical care.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.2. <p>“‘Family member’ means the employee’s child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, or registered domestic partners as defined by Saint Paul Code of Ordinances Section 186.20 and any individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”</p> <ul style="list-style-type: none"> ▪ STP § 233.02. |

| | Minneapolis | St. Paul |
|--|---|--|
| Permissible Uses –“Safe Time” | <p>“[A]n absence due to domestic abuse, sexual assault, or stalking of the employee or employee's family member, provided the absence is to: a. seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking; b. obtain services from a victim services organization; c. obtain psychological or other counseling; d. seek relocation due to domestic abuse, sexual assault, or stalking or e. take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(3). | <p>“An absence due to domestic abuse, sexual assault, or stalking of the employee or employee’s family member, provided the absence is to: a. seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking; b. obtain services from a victim-services organization; c. obtain psychological or other counseling; d. seek relocation due to domestic abuse, sexual assault, or stalking; or e. seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.3. |
| Permissible Uses – Other | <p>“[T]he closure of the employee's place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(4). <p>“[T]o accommodate the employee’s need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(5). <p>“[T]o accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(b)(6). | <p>“The closure of the employee’s place of business by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.4. <p>“To accommodate the employee's need to care for a family member whose school or place of care has been closed by order of a public official to limit exposure to an infectious agent, biological toxin or hazardous material or other public health emergency.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.5. <p>“To accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.B.6. |

| | Minneapolis | St. Paul |
|-----------------------------|--|---|
| – Minimum Increments | <p>“An employer must allow an employee to use sick and safe time in increments consistent with current payroll practices as defined by industry standards or existing employer policies, provided such increment is not more than four (4) hours.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(f). | <p>“Employees may use earned sick and safe time in increments consistent with the current business/payroll practice as defined by industry standards or existing employer policies, provided such increment is not more than 4 hours.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.C. |
| Rate of Pay | <p>“An employer with six (6) or more employees must compensate the employee at the same hourly rate with the same benefits as employee’s regular rate of pay for the hours the employee was scheduled to work during the time the employee uses their accrued sick and safe time but in no case shall the employee be compensated at a rate less than the rate requirement in Minnesota Statutes, Section 177.24. Compensation is only required for hours that an employee is scheduled to have worked.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.220(g), as amended. <p>“‘Regular rate of pay’ means the employee’s hourly rate, including payments for shift differentials, for an hourly employee or an equivalent rate for an exempt employee. Regular rate of pay does not include: (1) Tips. (2) Commissions. (3) Reimbursement for expenses incurred on the employer's behalf. (4) Premium payments for overtime work or work on Saturdays, Sundays, holidays, or scheduled days off, if the premium rate is at least one and one-half (1-1/2) times the normal rate. (5) Bonuses. (6) Cash or other valuables in the nature of gifts on special occasions. (7) Payments made pursuant to a bona fide profit-sharing plan or trust or bona fide thrift or savings plan. (8) Contributions irrevocably made by an employer to a trustee or third person pursuant to a bona fide plan for providing old-age, retirement, life, accident, or health insurance or similar benefits for employees.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.40, as amended. | <p>“An employer must compensate an employee for used sick and safe time at the employee’s standard hourly rate, for hourly employees, or an equivalent rate, for salaried employees. Employees are not entitled to compensation for lost tips or commissions and compensation is required only for hours that an employee is scheduled to have worked.”</p> <ul style="list-style-type: none"> ▪ STP § 233.04.D. |

| | Minneapolis | St. Paul |
|---------------------------------------|--|--|
| Required Posters and Handbooks | <p>“Every employer shall post, in a conspicuous place at any workplace or job site where any employee works, the notices required by subsection (a). Every employer shall post this notice in English, and any language spoken by at least five (5%) of the employees at the workplace or job site if published by the department.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.250(b). <p>“An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.250(c). | <p>“Employers may comply with this section by displaying the poster in a conspicuous and accessible place in each establishment where such employees are employed.”</p> <ul style="list-style-type: none"> ▪ STP § 233.07.C. <p>“An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.”</p> <ul style="list-style-type: none"> ▪ STP § 233.07.D. |
| Notice of Sick Leave Balance | <p>“Upon request by an employee, the employer must provide, in writing or electronically, information stating the employee's then-current amount of: (1) accrued sick and safe time available to the employee, and (2) used sick and safe time. Employers may choose a reasonable system for providing this notification, including, but not limited to, listing information on each pay stub or developing an online system where employees can access their own information.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.260. | <p>“Upon request of the employee, the employer must provide, in writing or electronically, information stating the employee's then current amount of: 1. earned sick and safe time available to the employee, and 2. used earned sick and safe time. Employers may choose a reasonable system for providing this notification, including but not limited to listing information on each pay stub or developing an online system where employees can access their own information.”</p> <ul style="list-style-type: none"> ▪ STP § 233.08. |
| Transfer/Rehire | <p>If transferred to a “separate division, entity, or location out of the city,” the employer must maintain previously-accrued sick leave for 3 years.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.280(a). <p>If employee is rehired within 90 days of separation, “previously accrued sick and safe time that had not been used must be reinstated” and the employee is entitled to use the leave immediately.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.280(d). | <p>If transferred to “a separate division, entity, or location outside of the city,” the employer must maintain previously-accrued sick leave for 3 years.</p> <ul style="list-style-type: none"> ▪ STP § 233.10.A. <p>If employee is rehired within 90 days of separation, “previously earned sick and safe time that had not been used must be reinstated” and the employee is entitled to use the leave immediately.</p> <ul style="list-style-type: none"> ▪ STP § 233.10.C. |

| | Minneapolis | St. Paul |
|---|--|--|
| Payout at Termination | <p>“Nothing in this chapter may be construed as requiring financial or other reimbursement to an employee from an employer upon the employee's termination, resignation, retirement, or other separation from employment for accrued sick and safe time that has not been used.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.280(a). | <p>“An employer is not required to provide financial or other reimbursement to an employee upon the employee's termination, resignation, retirement, or other separation from employment for earned sick and safe time that the employee has not used.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.E. |
| Exemption for Current Leave Policies | <p>“Employers who provide their employees sick and safe time under a paid time off policy or other paid leave policy that meets or exceeds, and does not otherwise conflict, with the minimum standards and requirements provided in this chapter are not required to provide additional sick and safe time.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.310(b). | <p>“If an employer has a paid-leave policy, such as a paid-time-off policy, or a combination of sick and vacation time, that makes available to employees an amount of paid leave that may be used for the same purposes and under the same conditions as earned sick and safe time under this section and that is sufficient to meet the requirements for earned sick and safe time as stated in subsections (A)-(C) of this section, the employer is not required to provide additional earned sick and safe time. Satisfaction of subsections (A)-(C) may be made through any combination of sick, vacation, or paid time off.”</p> <ul style="list-style-type: none"> ▪ STP § 233.03.D. |
| Recordkeeping | <p>“An employer must maintain accurate records for each employee showing: (1) For non-exempt employees, hours worked. (2) Hours of leave available for sick and safe time purposes. (3) Hours of leave used for sick and safe time purposes.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.270(a), as amended. <p>Records must be maintained for 3 years.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.270(b). | <p>“Employers shall retain accurate records documenting hours worked by employees and earned sick and safe time taken by employees for a period of 3 years.”</p> <ul style="list-style-type: none"> ▪ STP § 233.09.A. |

| | Minneapolis | St. Paul |
|---|---|--|
| Discrimination / Retaliation | <p>“It shall be unlawful for an employer or any other person to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this chapter. . . . An employer shall not take adverse employment action or discriminate against an employee because the employee has exercised rights under this chapter. Such rights include, but are not limited to, requesting accrued sick and safe time, using accrued sick and safe time, informing any person about any employer's alleged violation of this chapter, making a complaint or filing an action to enforce a right to accrued sick and safe time under this chapter.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.240(a)-(b). | <p>“It shall be unlawful for an employer or any other person to discharge, threaten to discharge, demote, suspend, or in any manner discriminate or take adverse action against any person in retaliation for exercising rights protected under this Chapter. Such rights include the right to use earned sick and safe leave pursuant to this Chapter; the right to file a complaint or inform any person about any employer's alleged violation of this Chapter; the right to cooperate with the HREEO in its investigations of alleged violations of this Chapter; and the right to inform any person of his or her potential rights under this Chapter.”</p> <ul style="list-style-type: none"> ▪ STP § 233.06.A. |
| Agency Responsible for Enforcement | Minneapolis Department of Civil Rights. | St. Paul Department of Human Rights and Equal Economic Opportunity. |
| Statute of Limitations | <p>365 days to file an administrative complaint.</p> <ul style="list-style-type: none"> ▪ MPLS § 40.120(a). | <p>365 days to file an administrative complaint or a lawsuit in Ramsey County District Court.</p> <ul style="list-style-type: none"> ▪ STP § 233.13; STP § 233.06.B. |

| | Minneapolis | St. Paul |
|------------------|---|---|
| Penalties | <p>“1. Reinstatement and back pay. 2. The crediting to an employee of any accrued sick and safe time accrued but not credited plus payment to the employee of the dollar value of the accrued sick and safe time accrued but not credited multiplied by two (2), or two hundred fifty dollars (\$250), whichever amount is greater. 3. The payment of any accrued sick and safe time unlawfully withheld plus payment to the employee of the dollar amount of accrued sick and safe leave withheld multiplied by two (2), or two hundred fifty dollars (\$250), whichever amount is greater. 4. Up to a one thousand five hundred dollar (\$1,500) administrative penalty payable to the employee for each violation of sections 40.230 [confidentiality] or 40.240 [discrimination/retaliation]. 5. An administrative fine payable to the city of up to fifty dollars (\$50) for each day, or portion thereof, a violation of sections 40.250, 40.260 to 40.270 that has continued following written notice to the employer of such violation with a period of no less than five (5) business days to comply.”</p> <ul style="list-style-type: none"> ▪ MPLS § 40.120(d). | <p>“1. Reinstatement and back pay. 2. For the first violation, the payment of any earned sick and safe time unlawfully withheld, and the payment of an additional sum as liquidated damages to each employee whose rights under this chapter were violated. The dollar amount of earned sick and safe time withheld from the employee multiplied by two, or \$250.00, whichever amount is greater, may be included as the liquidated damages to be paid to the employee. 3. For a second violation by an employer against the same employee, in addition to the payment of any earned sick and safe time unlawfully withheld, the director shall assess liquidated damages in an additional amount and order the employer to pay to the employee the dollar value of the sick and safe time unlawfully withheld multiplied by two, or \$250.00, whichever amount is greater. In addition thereto, for any second violation by an employer, the director shall assess an administrative fine, payable to the City, up to \$1,000. 4. In addition to the above, for a third or any subsequent violations against the same employee, the director shall assess an administrative fine, payable to the employee, up to \$1,000, or an amount equal to ten percent of the total amount of unpaid wages, whichever is greater. 5. An administrative fine of up to \$1,000, payable to the employee, for each violation of sections 233.05 or 233.06 of this chapter. 6. An administrative fine of up to \$1000, payable to the City, for each violation of sections 233.07, 233.08, or 233.09 of this chapter.”</p> <ul style="list-style-type: none"> ▪ STP § 233.13.D. |

| | Minneapolis | St. Paul |
|---------------------------------|--------------------|---|
| Private Right of Action? | No. | Yes. An aggrieved employee may “bring a civil action” and recover “any and all damages recoverable at law, together with costs and disbursements, including reasonable attorney’s fees, and may receive injunctive and other equitable relief as determined by the court.” <ul style="list-style-type: none"> ▪ STP § 233.06.B. |

III. TOUGH SICK LEAVE QUESTIONS.

A. **Round 1.**

- *My employees telecommute, do I have to provide them with sick leave?*
- *Our business is located in St. Louis Park, but my employees make deliveries in Minneapolis each day. Are they covered?*
- *My business is located in Anoka, but we store equipment in a storage unit in Minneapolis and St. Paul, are we covered?*

B. **Round 2.**

- *I pay my employees Davis-Bacon rates, so that means they’re exempt, right?*
- *I have a group of employees called “interns” or pre-apprentices,” are they exempt?*
- *We are based in Edina, but we have a construction trailer at a project in Minneapolis, are we covered?*

C. **Round 3.**

- *I have a group of employees in Minneapolis that just elected a Union to represent them, am I exempt until July 1, 2018?*
- *We’ve reached impasse with the Union over the sick leave issue for employees in Minneapolis, are we still “exempt”?*

D. **Round 4.**

- *Our policy caps accrual of sick leave at 100 hours, is this lawful?*
- *We have a “use-it-or-lose-it” sick leave policy, is that OK?*
- *What if the policy provides 100 hours of sick leave on a “use-it-or-lose-it” basis?*

E. Hypo # 1.

- ***Facts:** Acme credits sick leave two weeks at a rate of 1 hour for every 30 hours worked and rounds to the nearest whole hour.*
- ***Questions:***
 - *Is Acme complying with the ordinances?*
 - *If not, how can their practice be adjusted?*
- ***More Facts:** Acme changes its policy to provide a lump sum of sick leave (1.846 hours per week) on a bi-weekly basis to all full-time employees.*
- ***Questions:***
 - *Does this comply?*
 - *If not, how can their practice be adjusted?*

F. Round 5.

- *Our company has a PTO policy, do we have to list out all of the reasons that an employee can take protected sick leave?*
- *An employee's nanny cannot work because she is sick, is the time off protected?*
- *An employee's au pair quits, is the time off protected? For how long?*

G. Round 6.

- *If we require a 4-hour minimum usage, can an employee use 4.5 hours of sick leave?*
- *An employee takes 8 hours of sick leave after working 40 hours. Do I have to pay him OT for the time?*
- *How do I calculate the rate for salaried employees?*
- *What if the employee is only paid commissions?*
- *What if the employee is paid a "piece-rate"?*
- *An employee picked up a weekend shift, which is paid at a higher rate, but then called in sick. Do I have to provide sick leave? If so, at what rate?*

H. Round 7.

- *We have a PTO policy that complies with the ordinance, do we have to pay out PTO when an employee separates?*
- *What if we don't have an online system and we can't put the balance on employee's paychecks, is there another way to comply?*

I. Round 8.

- *Can I do accrual for some employees and front-loading for others?*
- *We have an "unlimited" leave policy for some employee, does this comply with the sick leave ordinance?*

J. Round 9.

- *If I have a PTO policy, do I need to track what uses qualify as "sick leave"?*
- *After an employee uses 48 hours of leave in a leave year, can I deny the leave and/or apply attendance points?*

K. Hypo #2.

- ***Facts:*** *Hank has 120 hours of PTO. His employer assumes 48 hours are sick/safe leave in the first year and 80 hours each year thereafter.*
- ***Questions:***
 - *If Hank takes a 1 week vacation, how much PTO does he have left?*
 - *How much of that is sick/safe leave?*
- ***More Facts:*** *Hank is fired shortly after his 1 week vacation.*
- ***Questions:***
 - *Can Hank sue for retaliation or discrimination?*
 - *Does Hank get to "cash-out" his remaining PTO balance?*

L. Hypo #3.

- ***Facts:*** *Steve quits his job in December. Steve's employer was using PTO to satisfy the sick leave ordinance. Pursuant to the policy, Steve was able to "cash-out" 80 hours of PTO. Less than 90 days later, Steve was rehired.*
- ***Questions:***
 - *Is Steve entitled to have his 80 hours of PTO reinstated?*

M. Round 10.

- *What if the employee requesting sick leave is the only employee at the location (e.g., gas station at 2 a.m., soccer coach, or nurse)?*
- *Can the employer make special rules with respect to these employees?*

N. Round 11.

- *How do we manage employee attendance?*
- *Can we discipline employees who fail to call-in before their shift?*
- *What if they don't tell us why they are taking the day off?*

O. Hypo #4.

- ***Facts:** Katherine takes 12 weeks of FMLA for a knee surgery.*
- ***Questions:***
 - *Can the employee use sick/safety leave?*
 - *Can the employer require the employee to use sick/safety leave?*
- ***More Facts:** After knee surgery, Katherine learns that she is pregnant.*
- ***Questions:***
 - *Can Katherine use sick/safety leave?*
 - *If Katherine has exhausted her paid leave, is she entitled to any other leave?*
- ***More Facts:** After her knee surgery and pregnancy, Katherine learns that she needs foot surgery. She has exhausted all FMLA, MPLA, and sick leave. Her doctor's note says she can return to work in 2 weeks.*
- ***Questions:***
 - *Is Katherine's absence protected?*
 - *What if her employer failed to designate her initial knee surgery as FMLA?*

P. Hypo #5.

- ***Facts:** Dan's wife just had a baby, and Dan wants to stay home and bond with his child.*
- ***Questions:***
 - *Can Dan use sick/safety leave?*
 - *Are there any other leaves available to Dan?*
 - *Does it matter if Dan is caring for his wife or the child?*

Q. Hypo #6.

- **Facts:** Mary used 80 hours of PTO to obtain an HRO against her ex-husband and to receive counseling.
- **Questions:**
 - Can Mary take 12 weeks of FMLA for back surgery?
 - If Mary adopts her ex-husband's stepson, can she take additional leave?
- **More Facts:** Mary learns that she is pregnant. She has exhausted her 12 weeks of FMLA and any sick leave.
- **Questions:**
 - Can Mary take leave?
 - If so, is it paid or unpaid?
 - Must the employer continue to pay its share of Mary's healthcare?

R. Hypo #7.

- **Facts:** Jack's infant grandson, who lives in AZ, is sick.
- **Questions:**
 - Can Jack use sick/safe leave?
 - Can Jack's employer designate the time as FMLA?

IV. SAMPLE HANDBOOK NOTICES.

Both the Minneapolis and the St. Paul sick leave ordinances require that employers update their employee handbooks to inform employees of their rights. See MPLS § 40.250(c) ("An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter."); STP § 233.07.D ("An employer that provides an employee handbook to its employees must include in the handbook notice of employee rights and remedies under this chapter.").

A. Minneapolis Handbook Notice.

NOTICE TO MINNEAPOLIS EMPLOYEES

Effective July 1, 2017, employees working at least 80 hours per year in the City of Minneapolis are generally covered by the Minneapolis Sick and Safe Time Ordinance. Collective bargaining agreements supersede ordinance requirements until July 1, 2018.

The rights of covered employees under the ordinance include the following: (1) the right to accrue one hour of paid Minneapolis Sick/Safe Leave for every 30 hours worked in Minneapolis, up to a maximum of 48 hours per year or 80 hours

including carryover from previous years is reached, whichever occurs first; (2) the right to carry over up to 80 hours of accrued but unused Minneapolis Sick/Safe Leave each year; (3) the right to use Minneapolis Sick/Safe Leave for the purposes set forth in the ordinance; (4) the right to file a complaint with the City of Minneapolis – Labor Standards Enforcement Division; and (5) the right to be free from retaliation for using or requesting Sick/Safe time.

Minneapolis Sick/Safe Leave can be used for: (1) the employee’s own illness, injury, or health condition or to obtain medical diagnosis, treatment, or preventative care for such condition(s); (2) care for a family member with an illness, injury, health condition, or who needs to obtain medical diagnosis, treatment, or preventative care for such condition(s); (3) receiving assistance due to domestic abuse, sexual assault, or stalking of the employee or a family member; (4) the closure of employee’s place of business by a public official; or (5) the closure of a family member’s school or place of care by a public official or due to inclement weather, loss of power, heating, or water, or other unexpected closure.

If you have any questions about St. Paul Sick/Safe Leave or any other employee benefits, please contact Human Resources.

B. St. Paul Handbook Notice.

NOTICE TO ST. PAUL EMPLOYEES

Effective July 1, 2017, employees working at least 80 hours per year in the City of St. Paul are generally covered by the St. Paul Earned Sick and Safe Time Ordinance.

The rights of covered employees under the ordinance include the following: (1) the right to accrue one hour of paid St. Paul Sick/Safe Leave for every 30 hours worked in St. Paul, up to a maximum of 48 hours per year or 80 hours including carryover from previous years is reached, whichever occurs first; (2) the right to carry over up to 80 hours of accrued but unused St. Paul Sick/Safe Leave each year; (3) the right to use St. Paul Sick/Safe Leave for the purposes set forth in the ordinance; (4) the right to file a complaint with the City of St. Paul – Labor Standards Enforcement Division; and (5) the right to be free from retaliation for using or requesting Sick/Safe time.

St. Paul Sick/Safe Leave can be used for: (1) the employee’s own illness, injury, or health condition or to obtain medical diagnosis, treatment, or preventative care for such condition(s); (2) care for a family member with an illness, injury, health condition, or who needs to obtain medical diagnosis, treatment, or preventative care for such condition(s); (3) receiving assistance due to domestic abuse, sexual

assault, or stalking of the employee or a family member; (4) the closure of employee's place of business by a public official; or (5) the closure of a family member's school or place of care by a public official or due to inclement weather, loss of power, heating, or water, or other unexpected closure.

If you have any questions about St. Paul Sick/Safe Leave or any other employee benefits, please contact Human Resources.

V. SAMPLE UNLIMITED LEAVE POLICY.

Unlimited Leave Policy (for Exempt, Salaried Employees)

As an exempt, professional, you have the discretion to manage your schedule as you see fit. If you need to be absent from work for any of the reasons set forth in the Minneapolis/St. Paul Sick Leave Ordinance, you may do so. If your absence qualifies for a leave of absence under FMLA, or constitutes any other form of protected leave, please inform HR immediately.

If you have any questions, please do not hesitate to contact [contact person].

VI. SAMPLE SICK LEAVE POLICY.

Paid Sick/Safe Time for Hourly Employees Working in Minneapolis and St. Paul

The Company provides eligible employees who work in Minneapolis and St. Paul with the opportunity to accrue sick/safe time ("Sick/Safe Time") when they are unable to work due to a brief illness or for other qualifying reasons.

This policy is intended to comply with the requirements of any and all paid Sick/Safe leave statutes, ordinances, rules, or regulations that might apply to an employee in the circumstances at hand. In the event that any valid state or local law, ordinance, rule, or regulation provides for greater leave rights than this policy, the law, ordinance, rule, or regulation in question will control over this policy.

Who is covered? This policy applies to all employees who work for hourly pay and perform work in Minneapolis or St. Paul, whether full-time, part-time, temporary, or seasonal employees.

When do I become eligible to use Sick/Safe Time? Employees who are employed on July 1, 2017, are immediately eligible to accrue and use Sick/Safe Time. Employees who are hired after July 1, 2017, begin to accrue Sick/Safe Time immediately, but become eligible to use Sick/Safe Time only after the first ninety (90) calendar days of their employment ("Waiting Period").

Employees who have a break in employment and are rehired within 90 days will be credited with any previously accrued, unused Sick/Safe Time, and days that the employee worked for the Company before the break in employment will be counted towards completion of the Waiting Period.

How Much Sick/Safe Time Do I Have? Beginning on July 1, 2017, employees covered by this policy will begin to accrue Sick/Safe Time on a *calendar* year basis, defined as January 1st through December 31st (the “Leave Year”).

Covered employees accrue one hour of Sick/Safe Time for every 30 hours worked each pay period up to a maximum of 48 hours each Leave Year. Employees only accrue Sick/Safe Time for hours actually worked; employees do not accrue Sick/Safe Time while on vacation, leave, or while using Sick/Safe Time or for any other non-working time.

At the end of each Leave Year, employees will be permitted to carryover a maximum of 80 hours of accrued but unused Sick/Safe Time to the next Leave Year. For example, an employee who accrued 48 hours of Sick/Safe Time in the first Leave Year, but who did not use any of it, can carry over 48 hours to the start of the second Leave Year.

Once an employee reaches 80 hours of Sick/Safe Time, through either carry-over and/or accrual, the employee will no longer accrue additional hours (even if the yearly cap is not triggered) until the employee uses some of the hours that the employee has “in the bank.”

What Rate of Pay Will Apply to Sick/Safe Time? Sick/Safe Time for hourly or non-exempt employees will be paid at the employee’s regular rate of pay. The Company will not pay an employee’s overtime rate when an employee uses Sick/Safe Time, even for hours that would have been overtime hours if worked.

What Can Sick/Safe Time Be Used For? Eligible employees may use Sick/Safe Time in four-hour increments for any purpose that qualifies for paid time off under the Minneapolis and St. Paul Sick/Safe Time Ordinances, which includes the following:

- (1) for the employee’s own illness, injury, or health condition or for the employee obtain medical diagnosis, treatment, or preventative care for such condition(s);
- (2) to care for a family member with an illness, injury, or health condition or to care for a family member who needs medical diagnosis, treatment, or preventative care for such condition(s);
- (3) for an absence due to domestic violence, sexual assault, stalking, or to obtain medical treatment or other services related thereto;
- (4) closure of the employee’s place of business by a public official;
- (5) to accommodate the employee’s need to care for a family member’s school or place of care that has been closed by order of a public official;
or
- (6) to accommodate the employee’s need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

What Notice Must I Provide? If the need for Sick/Safe Time is foreseeable, the Company requires that employees provide at least seven (7) days’ notice to your manager. Employees must make a reasonable effort to schedule a foreseeable need for

Sick/Safe Time in a manner that does not unduly disrupt operations of the Company.

If the need for Sick/Safe Time is unforeseeable, the employee must provide notice to your manager as soon as practicable and must generally comply with the Company's notice and leave request procedures to the extent that it does not interfere with the ability of the employee to use the Sick/safe Time when needed.

If the expected duration of a Sick/Safe Time absence changes for any reason, an employee must notify your manager as soon as practicable.

An employee's failure to provide the notice required under this policy may result in a delay in payment or nonpayment of the time claimed as Sick/Safe Time and may also result in discipline for failure to follow Company policies and procedures.

Must I Provide Documentation for the Reason for Sick/Safe Time? If an employee uses Sick/Safe Time for more than three consecutive scheduled work days, the Company may require reasonable documentation for the purpose for the Sick/Safe Time. Documentation may include, but is not limited to, a signed statement from a health care provider. The employee must provide documentation to the Company within 15 calendar days of the request.

If the need for Sick/Safe Time is foreseeable and projected to last longer than three consecutive scheduled work days, the Company may require reasonable documentation of the purpose for the Sick/Safe Time before the Sick/Safe Time commences, or as soon as otherwise practicable.

The Company also reserves the right to require documentation verifying an employee's need to use Sick/Safe Time if there are indications of abuse, such as repeated use of unscheduled Sick/Safe Time on or adjacent to weekends, holidays, or pay days.

An employee's failure or delay in providing documentation requested by the Company may result in a delay in payment or nonpayment of the time claimed as Sick/Safe Time and may also result in discipline for failure to follow Company policies and procedures.

How Does Sick/safe Time Relate to Other Types of Leave? If you require time off from work because of a reason that qualifies under this policy and the Minneapolis and St. Paul Sick/Safe Time ordinances, you must use Sick/Safe Time. It is not optional. However, employees may not use Sick/Safe Time while on any other paid leave approved by the Company.

Depending on the reason, an employee's use of Sick/Safe Time also may qualify for concurrent leave under federal, state or other local laws, such as leave under the Minnesota Parental Leave Act (MPLA) or the federal Family and Medical Leave Act (FMLA). An employee will be required to exhaust any accrued Sick/safe Time for a qualifying purpose before being permitted to take unpaid leave.

How Will I Be Notified of My Sick/safe Time Balance? On each paystub, the Company will provide employees with information regarding the amount of unused Sick/Safe Time that is available for use during the remainder of the Leave Year and the amount that has been used by the employee.

Will I Be Paid for Any Unused Sick/safe Time? No, you will not be paid for any unused Sick/Safe Time. Payment for an employee's Sick/safe Time is not considered

earned or owed until Sick/Safe Time is used. Upon an employee's termination for any reason, all unused Sick/Safe Time is forfeited by the employee, and the Company will have no obligation to pay the employee for the unused Sick/Safe Time.

What if I Have Accrued Less Sick/Safe Time Than I Need to Use? If your absence for a qualifying Sick/Safe Time purpose exceeds the number of Sick/Safe Time hours that you have accrued and are eligible to use, you will not be paid for the excess hours, and the Company will apply its normal Attendance Policy, which may result in a determination that the excess hours are unexcused and subject to discipline under the Policy.

No-Retaliation Policy. The Company strictly prohibits retaliation or discrimination against employees who request or use Sick/Safe Time. An employee who believes that he or she has been wrongfully denied Sick/Safe Time or retaliated or discriminated against for requesting or taking Sick/Safe Time must immediately notify Human Resources.

This Policy Is Not a Contract of Employment. This policy is not a contract for employment and does not affect the at-will employment relationship between the Company and employees. The Company periodically may update this policy and reserves the right to interpret the policy as well as replace, modify, or revoke it at any time, upon reasonable notice.