

Sick and Safe Time in Minneapolis, St. Paul and Beyond

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Addendum: Update Regarding Minneapolis Lawsuit

* These materials are provided for informational purposes only. They are not intended to constitute legal advice in any particular situation.

Sick and Safe Time in Minneapolis, St. Paul and Beyond

Prepared and Presented by Leonard B. Segal

Throughout the country, various forms of sick and safe time (“SST”) laws have been passed that require covered employers to provide eligible employees with time off from work due to illness, domestic abuse, and various other reasons. These laws are quite varied in their approach and, for employers with employees who work in multiple locations, it can be challenging to comply with all of them. While this article is not so ambitious as to try to cover all of these laws, it will attempt to familiarize employers with the ordinances that have been passed in Minneapolis, St. Paul, and Duluth, Minnesota.

I. Effective Date of Minnesota SST Ordinances

The Minneapolis and St. Paul SST ordinances both took effect on July 1, 2017 (or January 1, 2018, for St. Paul employers with fewer than 24 employees). *Minneapolis Code of Ordinances, Chap. 40; St. Paul Code, Chap. 233*. The Duluth city council adopted Duluth’s SST ordinance, No. 10571, on May 29, 2018. It is scheduled to take effect on January 1, 2020. The Duluth ordinance will be Chapter 29E in Duluth’s City Code.¹

II. Employers and Employees Covered by the Ordinances

The Minneapolis and St. Paul ordinances both cover employees who work within the geographic boundaries of each respective city for at least 80 hours per year. *Minneapolis Code Chap. 40.40; St. Paul Code Chap. 233.02*. Duluth is different. The Duluth ordinance will cover employees: (i) who work within the geographic boundaries of the city for more than 50% of their working time in a 12-month period, or (ii) who are based in Duluth and spend a substantial part of their working time in the city and not more than 50% of their work-time in a 12-month period in any other particular place. *Duluth Code Sec. 29E-2(f)*.

Each ordinance defines “employee” a little differently. Under all three, however, part-time and temporary employees are considered employees for purposes of the ordinances; independent contractors are not. *Minneapolis Code Chap. 40.40; St. Paul Code Chap. 233.02; Duluth Code Sec. 29E-2(f)*.

As written, all private sector employers are subject to the Minneapolis and St. Paul ordinances, even if they are not located in Minneapolis or St. Paul. After passage of the Minneapolis ordinance, however, a lawsuit was brought challenging the legality of the ordinance. On May 8, 2018, the Hennepin County District Court (Judge Mel Dickstein) issued an order enjoining Minneapolis from enforcing its ordinance against “employers resident outside the geographic boundaries of the City of Minneapolis.” The Court’s Order can be found here:

¹ The Duluth ordinance has not yet officially been published in the city code and there potentially could be some changes to the ordinance before that occurs. As of the writing of this article, Duluth also has not yet issued any guidance regarding the new ordinance. Citations in this article to the Duluth ordinance are from <http://duluthmn.gov/city-clerk/earned-sick-and-safe-time/> as it existed on April 15, 2019.

http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/order_on_cross_motions_for_sj_final_05.08.18.pdf. As a result, Minneapolis will not enforce its ordinance against any employer without a physical location in the city. St. Paul, although not a party to the Minneapolis lawsuit, likewise will only apply its ordinance to employers with physical locations within the city of St. Paul. Minneapolis has appealed the Court's order, which appeal is pending.

Unlike the Minneapolis and St. Paul ordinances, the Duluth ordinance will only apply to businesses with five or more employees (whether or not they work in Duluth). *Duluth Code Sec. 29E-2(g)*. The Duluth ordinance may be susceptible to a similar legal challenge as was the Minneapolis ordinance. Duluth's definition of covered employers and employees, however, will mean the number of employees covered by the Duluth ordinance is less than under the Minneapolis ordinance, so query whether a legal challenge will be commenced.

III. Allowed Uses for SST

In Minneapolis and St. Paul, employees can use SST for several reasons that go beyond an employee's illness, including time off when their child's school is closed due to snow or cold weather. That is something those of us who live in Minnesota experienced several times in 2019!

Employees in Minneapolis and St. Paul can use SST for, among others, their own mental or physical illness, injury, or health condition; for medical diagnosis, care, or treatment; for preventative medical or health care; to care for a family member for the same purposes; for an absence due to domestic abuse, sexual assault or stalking of the employee or a family member if it's to seek medical attention, to obtain services from a victim services organization, to obtain psychological or other counseling, to seek relocation, or to take legal action or participate in related legal proceedings; for an absence due to the closure of the employee's place of business by order of a public health official to limit exposure to an infectious agent, biological toxin, hazardous material or other public health emergency; and to accommodate an employee's need to care for a family member whose school or place of care is closed for any of those reasons or due to inclement weather, loss of power, or other unexpected reasons. *Minneapolis Code Chap. 40.220(b)*; *St. Paul Code Chap. 233.04(b)*.

In Duluth, the reasons employees can use SST are more limited. Under the Duluth ordinance, employees can use SST for their own mental or physical illness, injury, or health condition; for medical diagnosis, care, or treatment; for preventative medical care; to care for a family member for the same purposes; and for an absence due to domestic abuse, sexual assault or stalking of the employee or a family member. *Duluth Code Sec. 29E-4(b)*.

Note that all three ordinances define "family member" much more broadly than the immediate family. All three ordinances include as family members an employee's child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, in-laws, grandchild, grandparent and domestic partners (registered domestic partners in Minneapolis and St. Paul). Beyond those, each ordinance provides slightly different categories of additional family members who are covered by the respective ordinance. *Minneapolis Code Chap. 40.40*; *St. Paul Code Chap. 233.02*; *Duluth Code Sec. 29E-2(h)*.

IV. Is SST Paid or Unpaid?

Minneapolis

For an employer with six or more employees, SST is paid leave. *Chap. 40.220(g)*. For an employer with five or less employees, while leave is still required, such leave is unpaid. *Minneapolis Code Chap. 40.220(h)*. *Exception:* For an employer operating within the first 12 months after hiring its first employee (other than chain establishments), only unpaid SST will be required. This exception is only to remain in effect for five years from July 1, 2017. *Minneapolis Code Chap. 40.90.*²

St. Paul

SST is paid leave for all eligible employees. *St. Paul Code Chap. 233.04(d)*. Unlike Minneapolis, there is no small company exception. *Exception:* For an employer operating within the first six months after hiring its first employee, SST may be unpaid. This exception will expire on January 1, 2023. *St. Paul Code Chap. 233.21(b)*. *See also, fn. 2.*

Duluth

SST is paid leave for all eligible employees but, as noted earlier, the Duluth ordinance only applies to businesses with five or more employees (whether or not they work in Duluth). *Duluth Code Sec. 29E-4(d), 29E-2(g)*. The number of employees is based on the average number of employees per week during the previous calendar year and, unless stated otherwise in a contract, includes temporary employees assigned by a staffing agency. *Id. See also, fn. 2.*

V. Accrual of SST Leave

Although employers can be more generous, the accrual and use of SST under each ordinance requires, at a minimum:

Accrual

Minneapolis & St. Paul: Employees accrue one hour of SST for every 30 hours worked, up to a maximum of 48 hours per year. *Minneapolis Code Chap. 40.210(a); St. Paul Code Chap. 233.03(b)*. For purposes of accrual, the Minneapolis ordinance specifically states that exempt employees are deemed to work 40 hours per week, unless their normal week is less than 40 hours in which case accrual is based upon their normal work week. *Minneapolis Code Chap. 40.210(b)*.

² Construction industry employers may satisfy each of the Minnesota ordinances by paying at least the prevailing wage rate as defined by Minn. Stat. §177.42 and as calculated by the Minnesota Department of Labor and Industry (“DOLI”), or by paying at least the required rate established in a registered apprenticeship agreement for apprentices registered with DOLI. *Minneapolis Code Chap. 40.220(j); St. Paul Code Chap. 233.04(h); Duluth Code Sec. 29E-3(e)*.

Duluth: Employees accrue one hour of SST for every 50 hours worked, up to a maximum of 64 hours per year. *Duluth Code Sec. 29E-3(b).*

What is a Year?: While the Minneapolis ordinance refers to a “calendar year,” it defines a calendar year as “a regular and consecutive twelve (12) month period as determined by an employer and may be based on an employee’s employment anniversary date.” *Minneapolis Code Chap. 40.40.* Duluth uses a similar definition (*Duluth Code Sec. 29E-2(a)*), while St. Paul defines a year as a calendar or fiscal year. *St. Paul Code Chap. 233.03(b).*

Carry Over of Earned but Unused SST

Minneapolis & St. Paul: Employees must be allowed to carry over accrued but unused SST to the following year. *Minneapolis Code Chap. 40.210(c); St. Paul Code Chap. 233.03(c).* Employers do not need to pay for unused SST at the termination of the employment relationship. *Minneapolis Code Chap. 40.280(a); St. Paul Code Chap. 233.03(e).*

Duluth: Employees must be allowed to carry over up to 40 hours of unused SST. *Duluth Code Sec. 29E-3(c).* As with the Minneapolis and St. Paul ordinances, employers do not need to pay for unused SST at the termination of the employment relationship. *Duluth Code Sec. 29E-3(f).*

Cap on Accrued SST

Minneapolis & St. Paul: The total amount of accrued but unused SST need not exceed 80 hours at any time. *Minneapolis Code Chap. 40.210(c); St. Paul Code Chap. 233.03(c).*

Duluth: No cap, but see carry over limit of 40 hours, above.

When Accrual Begins

Minneapolis & St. Paul: SST begins to accrue at the beginning of the employment relationship or the effective date of the respective ordinance, whichever is later. *Minneapolis Code Chap. 40.210(d); St. Paul Code Chap. 233.03(a).*

Duluth: Same as Minneapolis and St. Paul. *Duluth Code Sec. 29E-3(a).*

Frontloading

Employers may satisfy the accrual and carry over requirements by frontloading SST.

Minneapolis & St. Paul: Employers must provide at least 48 hours of earned SST to an employee following the first 90 days of employment for use during the first year, and then provide at least 80 hours of earned SST beginning each subsequent year. *Minneapolis Code Chap. 40.210(e); St. Paul Code Chap. 233.03(c).*

Duluth: Employers must provide at least 40 hours of SST following the first 90 days of employment for use during the first year, and then provide at least 40 hours of SST beginning each subsequent year. *Duluth Code Sec. 29E-3(d).*

VI. When SST Can Be Used

When SST is Available to be Used

Minneapolis & St. Paul: Employees may begin using accrued SST beginning 90 calendar days after they begin their employment. *Minneapolis Code Chap. 40.220(a); St. Paul Code Chap. 233.04(a).* Employees may use SST in increments consistent with the employer's policies or industry standards, provided such increment is not more than four hours. *Minneapolis Code Chap. 40.220(f); St. Paul Code Chap. 233.04(c); Duluth Code Sec. 29E-4(c).* There is no limit on the amount of SST that can be used in a year.

Duluth: Employees may begin using SST after 90 calendar days of employment. Employers may, however, limit the use of SST to 40 hours each year. *Duluth Code Sec. 29E-4(a).*

Employee Notice Requirements

If the need for leave is foreseeable, Minneapolis allows an employer to require employees to provide advance notice of up to seven days before using SST. If not foreseeable, then in Minneapolis notice can be required to be given as soon as practicable. *Minneapolis Code Chap. 40.220(c).*

St. Paul and Duluth provide that an employee can be required to comply with an employer's usual and customary notice requirements, provided that such requirements do not interfere with the purposes for which the SST leave is needed. *St. Paul Code Chap. 233.04(e); Duluth Code Sec. 29E-4(e).*

All three ordinances allow an employer to require reasonable documentation for absences of more than three consecutive days. *Minneapolis Code Chap. 40.220(d); St. Paul Code Chap. 233.04(f); Duluth Code Sec. 29E-4(f).*

VII. Required Notice to Employees

In Minneapolis and St. Paul, employers are required to post notices in a conspicuous location at each location where an employee works that provides employees with information concerning their rights to SST and states that retaliation against an employee is prohibited. The notice must be in English and other languages as required by the ordinances. *Minneapolis Code Chap. 40.250; St. Paul Code Chap. 233.07; see also, Section XI, which contains a link to required posters.* In addition, employers who have an employee handbook must include a notice of employee rights and remedies in the handbook. *Id.* Note that the specific notice requirements vary slightly between Minneapolis and St. Paul.

In addition, upon request, covered employees in Minneapolis and St. Paul must be provided with the following information either in writing or electronically: (i) the then-current amount of SST available to the employee; and (ii) the amount of used SST. This information must be provided through a reasonable system, such as on an employee's pay stub or through an online system where employees can access their own information. *Minneapolis Code Chap. 40.250; St. Paul Code Chap. 233.07.*

Although the Duluth ordinance contains notice requirements that are similar to those in Minneapolis and St. Paul, it does not appear to contain a posting requirement. *Duluth Code Sec. 29E-6.* It will be interesting to see whether a posting requirement is adopted once Duluth issues rules implementing its ordinance.

VIII. Relationship to Other Employer Time Off Policies

Employers that have a paid time off, sick leave, or other paid leave policy that is at least as generous as that required by the applicable SST ordinance(s), including the accrual of time off and allowing time off for the same purposes and under the same conditions as the applicable SST ordinance(s), are not required to provide additional SST. *Minneapolis Code Chap. 40.310; St. Paul Code Chap. 233.03(d); Duluth Code Sec. 29E-3(d).*

IX. Recordkeeping

All three ordinances require that records related to SST, including hours worked, SST accrued, and SST used, must be retained for at least three years. The Minneapolis ordinance specifies that the three-year period is in addition to the current year. *Minneapolis Code Chap. 40.270; St. Paul Code Chap. 233.09; Duluth Code Sec. 29E-7.*

X. Remedies

Covered employers must allow eligible employees to accrue and use SST as allowed by the applicable ordinance(s) and, of course, retaliating against an employee for exercising such rights is prohibited. *Minneapolis Code Chap. 40.240; St. Paul Code Chap. 233.06; Duluth Code Sec. 29E-6.*

Potential remedies for violating the SST ordinances include, but are not limited to, the following:

- Reinstatement and back pay;
- Payment to the employee for the failure to credit accrued SST; and
- Administrative fines/penalties

Minneapolis Code Chap. 40.120 – 40.160; St. Paul Code Chap. 233.13 – 233.16; Duluth Code Sec. 29E-10.

XI. Additional Resources

There is more to each ordinance than could be covered in these materials. The following are additional resources that employers may find helpful.

Minneapolis

- Ordinance Summary, with Employer and Employee Resources - <http://sicktimeinfo.minneapolismn.gov/>
- Ordinance Rules – http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/sst_rules_web_final_05_18_18.pdf
- Employer Resources - <http://sicktimeinfo.minneapolismn.gov/employer-resources.html>
- Employee Resources - <http://sicktimeinfo.minneapolismn.gov/employee-resources.html>
- FAQs - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/faqs_web_final_v2_1_17_19.pdf
- Employer Checklist - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/employer_checklist_final_2_1_18.pdf
- Employee Checklist - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/employee_checklist_final_2_1_18.pdf
- Required SST Poster (English version) - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/notice_poster_website_final_11_6_17.pdf

St. Paul

- Ordinance Summary, with Employer and Employee Resources - <https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development/earned>
- Ordinance Rules - <https://www.stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/ESST%20Rules%20Update.9.29.2017.pdf>
- Employer FAQs - https://www.stpaul.gov/sites/default/files/Media%20Root/REVISED%20ESST%20EMPLOYER%20Frequently%20Asked%20Questions_6_30_2017.pdf

- Employee FAQs - <https://www.stpaul.gov/sites/default/files/Media%20Root/EMPLOYEE%20FAQ-Final%2020170630.1.pdf>
- Employer Resources – <https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development-17>
- Employee Resources - <https://www.stpaul.gov/departments/human-rights-equal-economic-opportunity/contract-compliance-business-development-18>
- Required SST Poster (English version) - https://www.stpaul.gov/sites/default/files/Media%20Root/Human%20Rights%20%26%20Equal%20Economic%20Opportunity/ESST-Worplace%20Notice_English_Final.pdf

Duluth

- Ordinance as of April 15, 2019 - <http://duluthmn.gov/city-clerk/earned-sick-and-safe-time/>
- Earned Sick and Safe Time Task Force - <http://duluthmn.gov/city-council/earned-sick-and-safe-time-task-force/>

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Update Regarding Minneapolis Lawsuit

On April 29, 2019, after the materials were prepared and submitted for this session, the Minnesota Court of Appeals *reversed* the District Court's ruling that the Minneapolis sick and safe time ordinance could not be applied to employers outside the city. *Minn. Chamber of Commerce v. City of Minneapolis*, A18-0771 (Minn. Ct. App. April 29, 2019). The primary reason for the Court's decision was that because the ordinance only requires leave to accrue while an employee is working in Minneapolis, and only requires that accrued leave be allowed to be used by an employee when scheduled to work in Minneapolis, the ordinance operates solely within the city of Minneapolis and can be applied to employers located outside of the city. As a result of the Court of Appeals decision, the discussion in the original materials concerning the impact of the District Court's injunction no longer applies.

On May 7, 2019, in response to the Court of Appeals decision, Minneapolis published proposed changes to its sick and safe time rules and frequently asked questions. The proposed changes can be found here:

- Frequently Asked Questions - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/proposed_changes_sst_faqs_05_07_19.pdf
- Rules - http://sicktimeinfo.minneapolismn.gov/uploads/9/6/3/1/96313024/proposed_changes_sst_rules_05_07_19.pdf

Minneapolis is accepting public comments on its proposed changes through June 7, 2019. Comments can be submitted online or in person. For more information, please visit: <http://sicktimeinfo.minneapolismn.gov/employer-resources.html>

Stay tuned for further developments regarding sick and safe time. Two such developments that will be of particular interest are:

1. Will the Court of Appeals decision be appealed to the Minnesota Supreme Court?
2. What will St. Paul do, if anything, in response to the Court of Appeals decision? Currently, St. Paul's sick and safe time rules provide that an employee is only covered by the St. Paul ordinance if an employee's employer has a physical location within the city. A "physical location" is defined as "any kind of permanent building or structure where an employer does business and uses employees. It includes a residential location." While this limitation is included in St. Paul's rules, it does not appear in the ordinance itself. In light of the Minnesota Court of Appeals decision, will St. Paul amend its rules to eliminate the "physical location within the city" requirement?