

Minnesota's New Paid Family and Medical Leave, Sick Leave, Amended Pregnancy Accommodations

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Minnesota has become the 12th state to adopt a statewide paid program for employees during family and medical leaves. It also joined the more than 40 state and local jurisdictions mandating paid sick leave. Eligible Minnesota employees will be entitled to up to 48 hours of paid sick and safe leave and 20 weeks of family leave benefits. Additionally, the state amended its law requiring accommodations for pregnant and nursing employees.

The new statewide paid sick and safe leave law does not preempt local ordinances. Minneapolis, St. Paul, Duluth, and Bloomington (July 1, 2023) already have paid sick leave laws. Therefore, employers with employees in those cities will need to meet the more generous leave provisions and other protections of the applicable laws.

Family and Medical Leave

Eligible employees will be provided with up to 12 weeks of family leave benefits and with up to 12 weeks of medical leave benefits (subject to a 20-week annual limit of combined medical and family leave if there are more than a single qualifying event in a claim year).

Eligible workers will be permitted to take family and medical leave and receive compensation through the new state family and medical benefit insurance program beginning *January 1, 2026*. The program is funded initially with the state's budget surplus. Then, the program will be funded through employer and employee contributions, which also begin on *January 1, 2026*.

Covered Employers

The law applies to all private businesses, as well as state or local government sector employers and charter schools.

Employers may apply for approval to meet their obligations under the earned sick and safe time (ESST) law through the substitution of a private plan that provides the same rights, protections, and benefits as the statewide ESST law.

Eligibility

To be eligible, an individual must have earned at least 5.3 percent of the state average annual wage in total over the "base period" rounded down to the next lower \$100 (currently, \$3,500 per year).

Seasonal workers who are employed for no more than 150 days and federal employees are not eligible. Self-employed individuals may opt-in for coverage.

Types of Leave

A covered individual is eligible for family leave benefits if they take leave from work:

Related Services

Disability, Leave and Health
Management

1. To address their own serious health condition, including pregnancy;
2. To care for a covered family member with a serious health condition;
3. To bond with a new child;
4. To address certain needs related to the domestic abuse, sexual assault, or stalking of the worker or the worker's family member; and
5. To address certain needs arising from a family member's military deployment.

"Family member" is defined broadly and includes, among others, a child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, and many relationships by marriage.

Covered individuals also will be eligible for leave if they have been selected by an incapacitated person to be their caretaker.

Job and Benefits Protection

Employees who take leave are entitled to continued employee health benefits during leave. They also are entitled to reinstatement to an equivalent position when returning from leave, unless the employer can show the employee would not otherwise have been employed at the time reinstatement is requested.

Notice Requirements

Employers must post a notice prepared by the Minnesota Department of Labor and Industry. The poster will provide notice of available benefits and written notice of the law to employees.

Paid Sick Leave (ESST)

A new omnibus jobs and economic development law creates statewide paid sick and safe leave entitlements for eligible employees and expands protections for pregnant and nursing employees.

Starting *January 1, 2024*, Minnesota employees will be entitled to receive up to 48 hours of ESST a year.

The ESST law applies to all individuals or businesses with at least one employee.

Eligibility

Any employee who performs work for at least 80 hours in a year in Minnesota will begin accruing ESST on *January 1, 2024*.

Independent contractors and certain individuals employed by air carriers as flight deck or cabin crew members are expressly excluded from the definition of "employee" under the new law.

Accrual, Frontloading, Carryover

Under the ESST law, employees begin accruing ESST at the commencement of employment and will accrue a minimum of one hour of ESST for every 30 hours worked, up to a maximum of 48 hours of ESST in a year.

Employees who are exempt from overtime requirements are deemed to work 40 hours in each workweek for purposes of accruing ESST, except that an employee whose normal

workweek is less than 40 hours will accrue ESST based on the normal workweek.

Employees must be permitted to carry over accrued but unused paid sick leave benefits. The total amount of accrued but unused ESST must not exceed 80 hours at any time, unless the employer agrees to a higher amount. Moreover, unless the employer maintains a policy that states otherwise, the employer need not pay out an employee's earned but unused ESST upon separation from employment.

Instead of allowing employees to accrue ESST, employer may adopt a frontloading approach, providing an employee a lump sum of ESST at the beginning of each year or the commencement of employment. Employers that use the frontloading approach are not required to allow employees to carry over unused ESST at the end of the year. Under the frontloading approach, employers must provide employees with 48 hours of ESST if the employer pays employees for unused ESST at the end of the year. If the employer does not pay employees for unused ESST at the end of the year, then the employer must frontload 80 hours of ESST.

Use of ESST

An eligible employee may use ESST as soon as it accrues for any one of the following reasons:

1. To address an employee's own: (i) mental or physical illness, injury, or other health condition; (ii) need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or (iii) need for preventive medical or healthcare;
2. To care for a family member: (i) with a mental or physical illness, injury, or other health condition; (ii) who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or (iii) who needs preventive medical or healthcare;
3. For absences related to domestic abuse, sexual assault, or stalking of the employee or the employee's family member, provided the absence is to: (i) seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking; (ii) obtain services from a victim services organization; (iii) obtain psychological or other counseling; (iv) seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault, or stalking; or (v) 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;
4. Time needed when the employee's place of business closes due to weather or other public emergency or when an employee must care for a family member whose school or place of care has been closed due to weather or other public emergency;
5. When an employee cannot work or telework because the employee is: (i) prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; or (ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee's employer has requested a test or diagnosis; and
6. When it has been determined by the health authorities having jurisdiction or by a healthcare professional that the presence of the employee or family member of the

employee in the community would jeopardize the health of others because of the exposure to a communicable disease, whether or not the individual has actually contracted the communicable disease.

The definition of “family member” is extensive. It includes any individual “related by blood or whose close association with the employee is the equivalent of a family relationship.” Employees also may designate one individual annually who will be considered a “family member” for purposes of ESST.

Employers must allow employees to use ESST in the smallest increment of time tracked by the employer’s payroll system, so long as the increment is no more than four hours.

Reinstatement

Paid ESST benefits survive transfers, separations followed by a reinstatement within 180 days, and, in some circumstances, acquisitions by successor companies.

Employer Recordkeeping, Notification

The ESST law contains recordkeeping and notification requirements. Employers must maintain records documenting hours worked and ESST used by employees and make those records available to employees.

Employers must provide notice to employees of their rights to ESST, including the amount of ESST, the accrual year, and how ESST may be used by the employee. The notice must meet other specifications in the law. The Minnesota Department of Labor and Industry will publish a sample notice.

Employers that intend to require employees to provide notice before using ESST must give employees a copy of a written policy with reasonable notice procedures. This information also must be included in an employee handbook if the employer maintains and distributes one to its employees.

At the end of each pay period, employers must include in employees’ earning statements the total number of sick and safe time hours accrued and available for use, as well as the total number of earned sick and safe time hours used during the pay period.

Job and Benefits Protection

Employees who take ESST are entitled to continued employee health benefits during leave and to reinstatement of employment at the same rate of pay the employee had been receiving when the ESST leave commenced, plus any automatic adjustments in the employee’s pay scale that occurred during the leave period.

Pregnant and Lactating Employees

The omnibus law also includes amendments expanding existing statutory protections for pregnant and lactating employees. The changes will take effect *July 1, 2023*, and will apply to all employers with at least one employees.

Pregnant Employees

Employers must provide reasonable accommodations to employees experiencing health conditions related to pregnancy or childbirth, unless the employer can demonstrate the

accommodation would impose an undue hardship on the operation of the employer's business. The employee and employer must engage in an interactive process with respect to an employee's request for a reasonable accommodation.

The amendments did not change the law's limits on the information employers can request from employees and the limits on undue hardship. An employer still may not require a pregnant employee to obtain the advice of a licensed healthcare provider or certified doula to claim an undue hardship for the following accommodations: (1) more frequent or longer restroom, food, and water breaks; (2) seating; and (3) 20-pound lifting limit.

In addition, the new law added temporary leave of absence, modification in work schedule or job assignments, seating, and more frequent or longer break periods to the potential reasonable accommodations listed in the law.

Lactating Employees

For lactating employees, employers must continue to provide reasonable break times each day to an employee who needs to express milk for any reason. The break times need not run concurrently with any break times already provided to the employee.

The law also removed language (i) stating employers were not required to provide breaks if it would unduly disrupt the business and (ii) limiting the time period an employee can take these breaks to the 12 months following birth.

Employers may not reduce an employee's compensation for time used for the purpose of expressing milk.

Additionally, while employers must make reasonable efforts to provide a room or other location that meets the statutory specification for employees to express milk, they must also make reasonable efforts to provide a space that is "clean, private, and secure."

Notice Requirements

The law also includes new notice requirements. Employers must inform employees of their rights regarding pregnancy and lactation accommodation at the time of hire and when an employee makes an inquiry about or requests parental leave. Employers must include notice of employee rights and remedies in the employee handbook. The commissioner of the Minnesota Department of Labor and Industry will publish the required notice.

Next Steps for Employers

Covered employers should begin reviewing their policies to ensure compliance with the new leave and accommodation requirements. With regard to pregnancy and lactation accommodation, employers also should review their obligations under the new [federal Pregnant Workers Fairness Act and PUMP for Nursing Mothers Act](#). Employers must carefully scrutinize the interplay between federal and state leave laws in order to determine the correct course. Jackson Lewis attorneys are available to assist companies in their compliance efforts.

These Minnesota laws are included in our leave law map database that provides subscribers a detailed explanation of state and local leave laws around the country. The

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