



VIA EMAIL

October 27, 2025

Legislative Reference Library

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**In the Matter of the Proposed Rules Governing Earned Sick and Safe Time, *Minnesota Rules*, 5200.1200;
Revisor's ID Number R-04877; CAH Docket No. 25-9001-40129**

Dear Legislative Reference Library:

The Minnesota Department of Labor and Industry intends to adopt rules relating to Earned Sick and Safe Time. We plan to publish a Dual Notice in the October 27, 2025, *State Register*.

We have prepared a Statement of Need and Reasonableness. As required under Minnesota Statutes, sections 14.131 and 14.23, we are sending the library an electronic copy of the Statement of Need and Reasonableness at the same time that we are sending our Notice of Intent to Adopt Rules.

If you have any questions or concerns, please contact me at Byron.millea@state.mn.us/651-284-5072.

Sincerely,

A handwritten signature in black ink that reads 'Byron Millea'.

Byron Millea
Attorney
Office of General Counsel
Department of Labor and Industry

Enclosure: Statement of Need and Reasonableness



STATEMENT OF NEED AND REASONABLENESS

In the Matter of Proposed Rules Governing Earned Sick and
Safe Time, Minnesota Rules Chapter 5200.1200; R-04877

Department of Labor and Industry
Labor Standards Division

October 2025

General information:

1. Availability: The State Register notice, this Statement of Need and Reasonableness (SONAR), and the proposed rule will be available during the public comment period on the Agency's Public Notices website: [Rulemaking Docket for Minnesota Rules, Chapter 5200.1200](#).
2. View older rule records at: [Minnesota Rule Status, https://www.revisor.mn.gov/rules/status/](https://www.revisor.mn.gov/rules/status/)
3. Agency contact for information, documents, or alternative formats: Upon request, this Statement of Need and Reasonableness can be made available in an alternative format, such as large print, braille, or audio. To make a request, contact Krystle Conley, Rulemaking Coordinator, Department of Labor and Industry, 443 Lafayette Road North, St. Paul, MN 55155; telephone 651-284-5006; email dli.rules@state.mn.us; or use your preferred telecommunications relay service.
4. How to read a Minnesota Statutes citation: Minn. Stat. § 999.09, subd. 9(f)(1)(ii)(A) is read as Minnesota Statutes, section 999.09, subdivision 9, paragraph (f), clause (1), item (ii), subitem (A).
5. How to read a Minnesota Rules citation: Minn. R. 9999.0909, subp. 9(B)(3)(b)(i) is read as Minnesota Rules, chapter 9999, part 0909, subpart 9, item B, subitem (3), unit (b), subunit (i).

STATEMENT OF NEED AND REASONABLENESS	1
Acronyms	5
Introduction and Overview	6
Introduction.....	6
Background.....	6
Scope of Proposed Rules	10
Statutory Authority	10
Public Participation and Stakeholder Involvement.....	10
Need and Reasonableness of the Rules.....	11
Statement of General Need and Reasonableness	11
Rule-by-Rule Analysis.....	12
5200.1200. DEFINITIONS.....	12
5200.1201. ACCRUAL YEAR.....	13
5200.1202. HOURS WORKED.	14
5200.1203. TIME CREDITED AND INCREMENTS OF ACCRUAL.....	19
5200.1204. ACCRUAL AND ADVANCING METHODS.	21
5200.1205. EMPLOYEE USE.....	24
5200.1206. INCENTIVES.....	25
5200.1207. REASONABLE DOCUMENTATION.....	26
5200.1208. MISUSE OF EARNED SICK AND SAFE TIME.	27
5200.1209. MORE GENEROUS SICK AND SAFE TIME POLICIES.....	29
Regulatory Analysis.....	31
Classes Affected.....	31
5200.1202, Subp. 1 – Location of Hours Worked	31
Department/Agency Costs	32
Less Costly or Intrusive Methods	33
Alternative Methods.....	33
5200.1202, Subp. 1 – Location of Hours Worked	33
5200.1202, Subp. 3 – Indeterminate Shift	34
5200.1205, Subp. 1 – No Required use	35
5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse.....	37

Costs to Comply.....	37
Costs of Non-Adoption	38
5200.1202, Subp. 1 – Location of Hours Worked	38
5200.1205, Subp. 1 – No Required Use.....	38
5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse.....	39
5200.1209, Subp. 1 – Excess Paid Time Off	39
Differences from Federal Regulations	39
Cumulative Effect	40
Notice Plan.....	40
Required Notice	40
Additional Notice.....	41
Performance-Based Rules	42
Consultation with MMB on Local Government Impact	42
Impact on Local Government Ordinance and Rules.....	43
Costs of Complying for Small Business or City	44
Agency Determination of Cost	44
Authors, Witnesses, and Exhibits	45
Authors.....	45
Witnesses	45
Exhibits	45
Conclusion	46

Acronyms

ANP	Additional Notice Plan
APA	Administrative Procedures Act
CAH	Court of Administrative Hearings
CFR	Code of Federal Regulations
ESST	Earned Sick and Safe Time
Minn. R.	Minnesota Rules
Minn. Stat.	Minnesota Statutes
MMB	Minnesota Management and Budget
SONAR	Statement of Need and Reasonableness
RFC	Request for Comments

Abbreviations

Commissioner	Commissioner Nicole Blissenbach
Department	Minnesota Department of Labor and Industry

Citations

ESST Law	Minn. Stat. §§ 177.50 and 181.9445 – 181.9448
Specific Rule Authority	Minn. Stat. § 177.50, subdivision 6

Introduction and Overview

Introduction

The Commissioner of the Minnesota Department of Labor and Industry (“Commissioner”) proposes to adopt rules governing Earned Sick and Safe Time (“ESST”), as specifically authorized under Minnesota Statutes, section 177.50, subd. 6. Effective January 1, 2024, Minnesota Statutes, sections 177.50 and 181.9445 to 181.9448 (“the ESST law”) requires most employers to provide paid leave for covered employees to use for specific purposes, including when an employee is sick, to care for a sick family member, or to seek assistance if the covered employee or their family member has experienced domestic abuse, sexual assault, or stalking. The Minnesota Department of Labor and Industry (“Department”) is responsible for providing technical compliance assistance to employers and employees and taking enforcement action under Minnesota Statutes, section 177.27, subd. 4, when necessary. The ESST law also includes a private right of action under Minnesota Statutes, section 181.944. The proposed rules carry out the purposes of the ESST law and provide clarification and guidance regarding key issues in the law.

Background

The ESST law, codified at Minnesota Statutes, sections 177.50, and 181.9445 to 181.9448, requires most employers to provide eligible employees with at least one hour of paid leave for every thirty hours worked for various qualifying purposes. The ESST law was enacted during the 2023 legislative session and became effective on January 1, 2024.¹ The law was amended by the Legislature in 2024 and 2025.² The Department was granted rulemaking authority during the 2024 legislative session under section 177.50, subd. 6, to “adopt rules to carry out the purposes of” the ESST law.

The ESST law consists of four main sections in Minnesota Statutes, chapter 181, and one separate section in chapter 177. The definitions for the law are in section 181.9445. Key definitions include “earned sick and safe time,” “employee,” and “employer.” “Earned sick and safe time” is defined as “leave . . . paid at the same base rate as an employee earns from employment” and used for a qualifying purpose as described in section 181.9447.³ The Legislature added a definition for “base rate” in 2024 to clearly convey the meaning of that term as used in the “earned sick and safe time” definition.⁴ “Employee” is defined as a person “employed by an employer, including temporary and part-time employees, who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota.”⁵ Independent contractors, volunteer firefighters, elected officials, and certain seasonal family

¹ Laws of Minnesota 2023, chapter 53, article 12.

² Laws of Minnesota 2024, chapter 127, article 11; Laws of Minnesota 2025, chapter 6, article 5, sections 10 to 13.

³ Minnesota Statutes § 181.9445, subd. 4.

⁴ Laws of Minnesota 2024, chapter 127, article 11, section 6 and Minn. Stat. § 181.9445, subd. 4a.

⁵ Minn. Stat. § 181.9445, subd. 5. *See also* Laws of Minnesota 2024, chapter 127, article 11, section 7 (detailing amendments to the “employee” definition).

farm employees are exempt from this definition. “Employer” is defined as “a person who has one or more employees,” and the definition provides a non-exhaustive list of entities that qualify as employers.⁶ Overall, the employee and employer definitions cover most employees and employers in Minnesota.

Accrual of ESST is addressed in section 181.9446. The ESST law requires employers to provide employees at least one hour of ESST for every 30 hours worked.⁷ The employer does not have to allow an employee to accrue more than 48 hours of ESST per year, but employees have the right to carry over unused ESST into the next accrual year and can continue to accrue up to 80 total hours of ESST.⁸ Once an employee reaches 80 total hours of unused ESST, the employer is not required to provide further ESST accrual until the employee uses some of their available ESST hours.

The ESST law sets the minimum standards for accrual, so employers can allow greater accrual if they wish. If employers do not wish to provide ESST via accrual and annual carryover, employers have two alternatives, which are commonly referred to as “frontloading.” Employers can (1) provide 48 hours of ESST to employees for the year if they pay out the value of any used ESST at the end of an accrual year, or (2) provide 80 hours of ESST to employees for the year without any required payout of the value of unused ESST at the end of an accrual year.⁹ Section 181.9446, paragraph (c) explains that employees exempt from overtime are deemed to work 40 hours per week for the purposes of ESST accrual unless an employee works less than 40 hours in a normal workweek. Paragraph (d) requires ESST accrual to begin when the employee begins their employment. Paragraph (e) says, “Employees may use earned sick and safe time as it is accrued.”

An employee’s ability to use ESST and the parameters for use are covered in section 181.9447, which is the most extensive section of the ESST law. Subdivision 1 provides the list of eligible ESST uses, which include the employee or their family member’s illness or injury, certain types of bereavement leave, absences for sexual abuse or stalking and medical care or legal proceedings resulting from those situations, business, school or daycare closures related to weather or public emergencies, and absences related to communicable illnesses under a public emergency (e.g., pandemics). Subdivision 2 allows employers to require employees to provide up to seven days’ notice for foreseeable uses of ESST, so long as the requirement is reflected in a written policy that has been provided to employees. For unforeseeable uses of ESST, the employee must give notice as “reasonably required by the employer.”¹⁰ Subdivision 3 covers documentation employees can require when an employee uses ESST for more than two consecutive scheduled workdays, which is referred to as “reasonable documentation.”¹¹ In most instances, employees

⁶ Minn. Stat. § 181.9445, subd. 6.

⁷ Minn. Stat. § 181.9446(a).

⁸ Minn. Stat. § 181.9446(b)(1).

⁹ Minn. Stat. § 181.9446(b)(2).

¹⁰ This language was modified in the 2025 legislative session from “as soon as practicable” to “as reasonably required by the employer.” Laws of Minnesota 2025, chapter 6, article 5, section 10.

¹¹ The Legislature reduced the number of days before an employer can require reasonable documentation from three days to two days during the 2025 legislative session. Laws of Minnesota, chapter 6, article 5, section 11.

are allowed to meet the reasonable documentation requirement by providing the employer with a written statement indicating their absence was for an ESST purpose when the employee did not visit a health care professional or otherwise cannot obtain documentation in a reasonable time or without added expense.¹² Such written statements can be provided in the employee's first language and do not need to be notarized or in any particular format.¹³

The remaining portions of section 181.9447 address various employee rights and employer requirements.

- Subdivision 4 prohibits employers from requiring employees to find a replacement worker when the employee uses ESST.¹⁴
- Subdivision 5 allows ESST to be used in as little as 15-minute increments and prohibits employers from requiring ESST to be used in more than 4-hour increments.
- Subdivision 6 prohibits retaliation related to ESST, including prohibiting the use of an absence control or attendance point system against an employee who is using ESST.
- Subdivision 7 requires the employer to continue paying its share of the employee's insurance, as long as the employee is also paying their share, and it allows the employee to return from ESST absences at the same rate of pay and with all benefits accrued prior to taking ESST.
- Subdivision 8 allows an employer and employee to agree to the employee returning to work part-time while not forfeiting the employee's right to return to their original employment under Subdivision 7.
- Subdivision 9 requires employers to give all employees notice about employee rights under ESST law.
- Subdivision 10 requires employers to maintain records related to ESST accrual and use for at least three years, and to make ESST use and accrual information available to employees at the end of each pay period via a "reasonable system for providing this information."
- Subdivision 11 covers certain confidentiality requirements related to sensitive information about the employee's ESST use that must not be disclosed unless disclosure is required by law or otherwise consented to by the employee.

¹² Minn. Stat. § 181.9447, subd. 3(b). *See also* Minn. Stat. § 181.9447, subd. 3(c) and (d) (allowing employees to provide written statements that their absence was for an ESST purpose when other reasonable documentation in certain circumstances).

¹³ Minn. Stat. § 181.9447, subd. 3(f).

¹⁴ The Legislature modified this provision in the 2025 legislative session by adding that it "does not prohibit an employee from voluntarily seeking or trading shifts with a replacement worker to cover the hours the employee uses as earned sick and safe time." Laws of Minnesota 2025, chapter 6, article 5, section 12.

- Subdivision 12 covers a waiver from allowing ESST use for weather events or public emergencies for certain types of employees if such an exemption meets conditions related to giving these employees notice of the waiver via collective bargaining agreement or other written policy.¹⁵ Employees covered by subdivision 12 include firefighters, peace officers, 911 telecommunicators, correctional facility guards, and publicly employed commercial driver's license holders.

Section 181.9448 covers additional considerations and requirements related to other laws or policies. Subdivision 1, paragraph (a), allows employers to adopt policies that meet or exceed the minimum standards and requirements of ESST. Paragraph (a) also requires paid time off made available to employees for absences from work due to personal illness or injury to be subject to ESST protections, except for accrual protections in section 181.9446, when the paid time off is used as ESST (i.e., for a qualifying purpose). Other paragraphs in subdivision 1 allow for waivers of the ESST law requirements in certain situations, including under a collective bargaining agreement with a “bona fide building and construction trades labor organization.” Paragraph (j) allows an employer to advance ESST to an employee before it is accrued, including advancing the amount of ESST the employee is anticipated to receive for the remainder of the year, so long as the employer provides further accrual if the employee accrues more ESST than the employer anticipated.¹⁶ Subdivision 2 allows an employee to retain accrued ESST when they transfer to another “division, entity, or location” for the same employer but does not require the employer to pay out the value of ESST upon the employee’s “termination, resignation, retirement, or other separation from employment.” Subdivision 2 also requires employers to reinstate an employee’s accrued and unused ESST if they are rehired by the employer within 180 days of their separation from that employer, unless the employer had disbursed the ESST “to the benefit of the employee” (e.g., pay out the value of the ESST to the employee). Subdivision 3 requires a successor employer to reinstate unused ESST to employees if they are “terminated by the original employer and hired within 30 days by the successor employer.”

A separate portion of the ESST law is located at section 177.50. This section includes a cross reference to another statute providing a private right of action, allows the Department to make grants related to outreach and education about the ESST law, and requires the Department to submit an annual report the Legislature. Subdivision 5 prohibits employers from entering into contracts for labor or services with a contractor that the employer knows is not complying with the ESST law. Subdivision 6 provides the Department with rulemaking authority to carry out the purposes of the ESST law. Subdivision 7 makes employers who do not allow use or accrual of ESST liable to their employees for damages equal to the ESST that should have been provided or could have been used, plus an additional equal amount as liquidated damages. Additionally, employers who do not maintain records to establish how much ESST

¹⁵ Minn. Stat. § 181.9447, subd. 12, was added during the 2024 legislative session. Laws of Minnesota 2024, chapter 127, article 11, section 14.

¹⁶ The Legislature added language to the advancing provision during the 2025 legislative session to provide more guidance to employers who would like to advance ESST time to employees for the remainder of an accrual year. Laws of Minnesota 2025, chapter 6, article 5, section 13.

should have been provided to employees are liable to the employees for damages equal to 48 hours of ESST for each year in which ESST was not provided, plus an additional equal amount as liquidated damages.¹⁷

Scope of Proposed Rules

The proposed rules create a new section of rules in Chapter 5200 specific to ESST. The proposed rules are numbered from 5200.1200 to 5200.1209.

Statutory Authority

The Department's general rulemaking authority is in Minnesota Statutes, section 175.171(2), which states that the Department shall have the powers and duties to, in pertinent part, "adopt reasonable and proper rules relative to the exercise of its powers and duties...."

The specific statutory authority for these proposed rules is in Minnesota Statutes, section 177.50, subd. 6, which states: "The commissioner may adopt rules to carry out the purposes of this section [177.50] and sections 181.9445 to 181.9448."

The effective date of the Department's specific ESST rulemaking authority was May 25, 2024.¹⁸

Public Participation and Stakeholder Involvement

The Department has engaged in significant community and stakeholder outreach regarding the ESST law from June 2023 to the present. The goal of these activities has been to encourage public participation, education, training, and stakeholder involvement related to the ESST law, including this rulemaking.¹⁹

In addition to the significant public engagement conducted by the Department's Labor Standards Division, and consistent with the requirements of the APA, the Department published two Requests for Comments ("RFC"). At the time of publication of the first RFC on July 22, 2024, the Department did not publish a preliminary draft of the proposed rules. The Department relied on comments submitted during the first comment period to inform its preliminary proposed rule draft. During that first comment period, which lasted 45 days and ended on September 6, 2024, the Department received 41 comments. Many initial comments were requests for a draft of the rules, but 30 comments included substantive feedback.

¹⁷ The Legislature added subdivision 7 during the 2024 legislative session. Laws of Minnesota 2024, chapter 127, article 12, section 3.

¹⁸ Laws of Minnesota 2024, chapter 127, article 11, section 2.

¹⁹ See Exhibit 1 for tables detailing in-person and virtual public engagement related to ESST conducted by the Department's Labor Standards Division.

On March 3, 2025, the Department published a second RFC that included a preliminary draft of the possible rules. The draft rules reflected the comments and concerns obtained through the first RFC and various presentations soliciting input from the public and stakeholders. During the second comment period, which lasted 30 days and ended on April 2, 2025, the Department received 38 comments, all of which included substantive feedback. All comments received by the Department were carefully and thoughtfully considered in developing these proposed rules.

All published notices were sent to the individuals and organizations on the Department's rulemaking mailing list and those described in its additional notice plan.²⁰

In addition, the Department posted the required rulemaking docket on its website. The docket page describes the subject of the rules, includes links to publications related to the rules, provided a link to a draft of the possible rules (during the second RFC period), and currently includes the proposed rules and this Statement of Need and Reasonableness ("SONAR"). The docket page can be found here: <https://www.dli.mn.gov/business/employment-practices/rulemaking-docket-minnesota-rules-chapter-5200>.

Need and Reasonableness of the Rules

Statement of General Need and Reasonableness

The Legislature provided the Department with the statutory authority to adopt rules to carry out the purposes of the ESST law.²¹ The proposed rules are intended to clarify key issues in the ESST law, including employer administration of ESST benefits, determining hours worked that are subject to ESST accrual, an employee's right to use ESST, incentives related to production or attendance goals, reasonable documentation, employee misuse of ESST, and more generous paid leave policies. The proposed rules reflect feedback received during the Department's two comment periods in 2024 and 2025 and from additional outreach and stakeholder engagement. The Department's own experience providing technical assistance to stakeholders seeking to implement and comply with the ESST law has also informed this rulemaking. The proposed rules are necessary to ensure more consistent understanding and implementation of the ESST law, which will alleviate stakeholder confusion and minimize costs associated with noncompliance for all stakeholders.

While drafting these rules, the Department carefully considered the parameters of the ESST law, researched and considered the ESST laws and rules of other jurisdictions, and reviewed feedback during the two comment periods, as well as informal feedback from stakeholders outside of comment periods.

²⁰ See page 42 for details on the Department's Additional Notice Plan.

²¹ Laws of Minnesota 2024, chapter 127, article 11, section 2.

The proposed rules are reasonable because they do not conflict with the ESST law, are cost-neutral for employers, and largely function as a means of clarification rather than imposing additional requirements.

Rule-by-Rule Analysis

The rule-by-rule analysis discusses each section of the proposed rules, including a description of the need for the proposed rules and why the proposed rules are reasonable solutions for meeting those needs.

5200.1200. DEFINITIONS.

Subpart 1. Scope.

This proposed subpart is needed to make clear that the proposed definitions apply to both the statutory sections of the ESST law, Minnesota Statutes, sections 177.50, 181.9445 to 181.9448, and the proposed rules parts, 5200.1201 to 5200.1209. The terms defined are each used in statutory sections of the ESST law, and each term is also used in the proposed rules, which will provide for consistency in the meaning and application of the defined terms.

Subpart 2. Accrual year.

This proposed subpart defines the term, “accrual year,” by cross-referencing the statutory definition of “year” in Minnesota Statutes, section 181.9445, subd. 11. The statute defines “year” to mean “a regular and consecutive 12-month period, as determined by an employer and clearly communicated to each employee of that employer.” The 12-month period determined by the employer relates to the employee’s accrual of ESST and governs whether an employee reaches their annual maximum number of ESST hours (i.e., 48 hours) during an accrual year. The accrual year also sets the yearly end date for the purposes of applying the annual carryover, frontload and/or payout options found in section 181.9446. Using the term “accrual year” is reasonable and necessary to provide a more specific and descriptive phrase than the alternative of using “year” throughout the proposed rules.

The term “accrual year” is also used in section 181.9447, subd. 9, regarding an employer’s duty to provide notice to employees of their ESST rights. Accordingly, this definition is necessary to further clarify that “accrual year” and “year” have the same meaning in the statute.

Subpart 3. Qualifying purpose.

Proposed subpart 3 clarifies that “qualifying purpose” refers to ESST used for an eligible reason listed in Minnesota Statutes, section 181.9447, subd. 1. While this term is not used extensively in these proposed rules, it is reasonable and necessary to include a phrase as shorthand over the alternative of using a lengthier description to communicate the same meaning, such as, “earned sick and safe time used for an eligible reason pursuant to section 181.9447, subd. 1.” “Qualifying purpose” is also used in section 181.9447, subd. 3, regarding reasonable documentation for ESST use. So, this definition clarifies that this term refers to eligible uses of ESST as described in section 181.9447, subd. 1.

5200.1201. ACCRUAL YEAR.

This proposed rule is necessary to address the outcome for an employer who does not designate an accrual year and the manner in which an employer may change their designated accrual year. The proposed subparts addressing these issues are reasonable because they maintain employee protections related to ESST accrual while allowing employers to designate and change the accrual year in accordance with the ESST law.

Subpart 1. Accrual year.

Proposed subpart 1 clarifies the consequences of an employer not following the requirement to designate and clearly communicate its “regular and consecutive 12-month period” (i.e., accrual year) to employees in accordance with Minnesota Statutes, section 181.9445, subd. 11. The statute itself does not indicate the outcome if an employer fails to properly designate an accrual year. Therefore, this proposed subpart is necessary to address this issue by providing a default that is consistent with the statutory definition – the accrual year is the calendar year (i.e., January to December) if the employer does not designate and clearly communicate a different, consecutive 12-month time period.

Using the calendar year as the default is the most reasonable and commonly understood manner of defining a consecutive 12-month period. Additionally, by establishing a default accrual year when an employer fails to designate one of its own, employees will not face uncertainty or disadvantages related to an employer not appropriately administering an ESST program. For example, an employer who fails to implement an ESST program, including failing to designate an accrual year, would be deemed to have an accrual year equivalent to a calendar year, and damages under section 177.50, subd. 7, would be calculated based on a calendar year.

Subpart 2. Changes to accrual year.

The ESST law allows an employer to unilaterally designate its accrual year, which means an employer can change their accrual year. However, the law does not provide any explicit guidance about how to change accrual years in compliance with the ESST law and related notice provisions. While this type of change may be infrequent, such a change could result in lost ESST time for employees. Therefore, it is necessary to add a provision to protect employee ESST accruals from outcomes that would not comply with the ESST law.

Proposed subpart 2 explains that any change to an employee’s accrual year made by an employer must first be communicated to the employee in writing. The last sentence of this proposed subpart prohibits employers from a change in the accrual year that would negatively impact an employee’s ability to accrue ESST. An employer who changes their accrual year would need to ensure employees can still accrue at least 48 hours in the new accrual year as required by Minnesota Statutes, section 181.9446(a) and 80 hours total as required by section 181.9446(b)(1). An example is helpful to illustrate how the rule operates.

Example: ACME Company designated their accrual year as running from January to December. In late 2025, the company decides to change its accrual year to align with their fiscal year, which runs from July through the following June. ACME Company decides to move to a new accrual year beginning July 1, 2026, and creates a 6-month gap between the old and new accrual years from January 1, 2026, to July 1, 2026. During this gap, ACME Company must ensure employees can accrue ESST in accordance with Minnesota Statutes, section 181.9446 in amounts no less than the employees would have accrued without a change in accrual year.

In the above example, an employer who counted the ESST hours accrued in the 6-month gap towards the employee's 48-hour maximum annual ESST accrual in the old or new accrual year would, in effect, create a one-time accrual year of 18 months, which would negatively impact an employee's accrual of ESST. Therefore, this subpart is necessary to require that employers can only change accrual years in a manner that does not violate an employee's right to accrual of ESST. The proposed subpart is reasonable because it maintains the ESST law requirements for minimum annual accrual and minimum overall accrual while giving employers flexibility to change their accrual year, as allowed under the ESST law, to better align with business needs, human resource planning, etc. The proposed subpart also aligns with the broader purpose of the ESST law by preserving an employee's access to earned benefits, prioritizing clear communication, and ensuring that any change to an employee's accrual year does not undermine their statutory rights.

5200.1202. HOURS WORKED.

This proposed rule addresses questions related to the accrual of ESST and the deductions of accrued ESST from an employee's balance when the employee uses ESST. Minnesota Statutes, section 181.9446 sets the minimum ESST accrual rate and the annual and total number of ESST hours employers must allow employees to accrue, as well as annual frontloading options for employers who wish to avoid tracking ongoing ESST accruals.²² This rule is intended to clarify the ESST law as it relates to: (1) ESST accrual for employees who work in multiple states; (2) determining which hours count toward employees' ESST accrual; (3) determining how many hours to deduct from an employee's ESST balance when ESST is used for a shift of an indeterminate length; and (4) determining how many hours to deduct from an exempt employee's ESST balance when absent for a full work day.

²² Under Minn. Stat. § 181.9446(a) and (b), an employee must be allowed to accrue up to 48 hours of ESST each accrual year and no more than 80 hours of ESST at any one time, unless the employer agrees to a higher amount for either minimum. Employers also have a separate option to "frontload" ESST hours for their employees under Minn. Stat. § 181.9446(b)(2) by either providing (1) 48 hours ESST for the year and paying out the value of any remaining ESST at the end of an accrual year, or (2) 80 hours ESST for the year without any required payout of the value of unused ESST at the end of an accrual year.

Subpart 1. Location of hours worked.

This proposed subpart clarifies the extent of ESST accrual based on whether the employee predominantly works in Minnesota. The definition of “employee” in Minnesota Statutes, section, 181.9445, subd. 5, makes an employee eligible for ESST if they are “employed by an employer” and “anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota.” This definition covers employees who may spend the majority of their work hours outside Minnesota, including those who neither reside nor regularly work in the state. The definition also covers employees who may have significant connections to Minnesota in the context of their employment by working extensively in the state, even if they do not reside in Minnesota.

However, nothing in the ESST law addresses whether hours worked by eligible employees outside of Minnesota should be counted towards ESST accrual. Without a rule, employers and employees will lack clear standards to follow regarding the extent of ESST accrual for individuals working in both Minnesota and elsewhere, and eligible employees may not receive the full benefits and protections of the ESST law. Therefore, it is necessary to propose a rule on this topic. Further, the proposed subpart is a reasonable method of ensuring eligible employees receive the full extent of ESST to which they are entitled. It creates an objective, quantifiable standard by which employers can evaluate whether their employees should accrue ESST for all hours worked or just those hours worked in Minnesota.

Notably, this proposed subpart has no effect on employers who opt to use a frontloading method, as provided in section 181.9446(b)(2), in which employees receive ESST hours up front for their accrual year. Employers who use frontloading avoid tracking hours worked for the purposes of ESST accrual, which would also include tracking the location of employees’ hours worked. This proposed subpart is also limited in its application by the minimum accruals required in section 181.9446(a) and (b)(1) for employers who do not use frontloading to provide ESST to their employees. For context, the minimum annual accrual of 48 ESST hours represents 1,440 hours worked in a year, which is an average of nearly 27 hours per week.²³

Item A of the proposed subpart is reasonable because employees who work the majority of their hours in Minnesota have a significant and predominant employment connection with Minnesota such that the ESST law should cover the entirety of the employee’s hours worked for the purposes of accruing ESST, regardless of their location. On the other hand, employees covered by Item B who work less than the majority of their hours in Minnesota accrue ESST only for hours worked in Minnesota, thereby limiting their accrual in line with their more limited interaction with the state.

The mechanics of this proposed subpart warrant further explanation. Each employee who receives ESST from their employer on a basis of accruing hours (rather than one of the two frontloading options) is categorized under either Item A or B of the proposed subpart. The employer should determine in good

²³ By comparison, a full-time employee working 40 hours per week for 52 weeks will work 2,080 hours in a year.

faith whether the employee is anticipated to work 50% or more of their hours outside Minnesota over the accrual year under Item B. Employers who opt to allow employees to accrue ESST in accordance with Item A are not required to make a good-faith determination because they are already providing employees with the maximum ESST accrual in a year as defined by section 181.9446.

While the proposed subpart is not overly prescriptive about how employers determine if an employee will accrue ESST in accordance with Item B, they must do so in good faith, as defined in Item D, which requires evaluation of at least the employee's anticipated work schedule and locations of work. Under the good-faith standard, employers are being asked to make a reasonable forecast. The good-faith standard was included so that employers do not have to make retroactive adjustments to ESST accruals if their determination ultimately turns out to be incorrect based on the locations in which the employee actually ends up working during the accrual year, so long as the employer conducted the evaluation in good faith. For example, if an employer estimates in good faith that an employee will work 45% of their time in Minnesota (i.e., falls under Item B), but the employee actually ends up working 55% of their time in Minnesota (i.e., falls under Item A), the proposed subpart does not require the employer to retroactively correct the employee's ESST accrual to account for the discrepancy. Item D's good-faith standard addresses employers who have made a determination that an employee falls under Item B, which ultimately turns out to be incorrect at the end of the accrual year, but not because of any specific, significant change in the employee's work circumstances. Significant changes in circumstances during the accrual year are addressed in Item C.

Once an employer determines whether the employee falls under Item B, the employer would not need to reevaluate its determination unless there is a significant change in the employee's work circumstances during an accrual year that requires a reevaluation of the employee's ESST accrual under this proposed subpart. Under Item C, if the employer finds that the employee's work circumstances will change significantly, then the employer will determine in good faith whether the employee's accrual falls under Item A or B going forward. Item C is intended to cover non-trivial changes in work circumstances, such as a change in work location or duties. In these instances, the employer has knowledge of a change that will occur that would require a reevaluation under Item C. If the employer determines a change in the employee's ESST accrual is necessary, any such change would be effective as of the date of the change in circumstances. The employee should receive notice prior to the change taking effect. Additionally, the employer cannot revoke any ESST hours already accrued and unused at the time of the change. All accrued and unused ESST hours must remain available for use by the employee.

Item C is necessary to distinguish significant changes from nominal changes in an employee's work circumstances that may occur during the accrual year. Item C is reasonable because it allows for a balanced approach to changes in circumstances by allowing accrual changes in situations where the employee would accrue more ESST (i.e., under Item A) or less ESST (i.e., under Item B). The proposed subpart is also reasonable because it limits an employer's responsibility to make mid-year accrual changes to only those situations in which such a change is clearly necessary to comply with the ESST law and this proposed subpart.

Item E is necessary because the ESST law does not specifically address telework, and telework is a current and relevant employment issue. An employee is considered to be working in the state from which they are physically performing telework. Therefore, an employee who teleworks in Wisconsin for the majority of their work hours for a company whose office is located in Minnesota will only accrue ESST for the hours in which the employee is working at the company's office in Minnesota or elsewhere in Minnesota, unless the employer agrees to provide a greater amount of accrual. The proposed provision is reasonable because it hinges on the employee's physical location rather than a less clear determination, such as identifying other locations in which a teleworking employee may be interacting with co-workers or customers.

Item F makes clear that the proposed subpart as a whole is not intended to limit employers who want to provide employees who work 50% or less of their hours in Minnesota with ESST accrual for all hours worked. This proposed provision reflects that the ESST law sets a floor, rather than a ceiling, regarding accrual amounts.²⁴ Some employers may wish to avoid application of the requirements and processes embedded in this proposed subpart, so this provision is necessary to give effect to and avoid any conflict with the statutory provisions that clearly authorize employers to take a more generous approach to their employees' ESST accruals than the law minimally requires.

Item G further limits the scope of this proposed subpart by deferring to other jurisdictions outside of Minnesota where this proposed subpart may be in conflict with a state or local law. The Department is unaware of any such laws, but the inclusion of this provision makes clear that other jurisdictions may override the requirements of this proposed subpart through their own legislative or regulatory authority and limit its reach.

Subpart 2. Determining hours worked.

Proposed subpart 2, item A, cross-references existing wage and hour administrative rules, Minn. R. 5200.0120 (Hours Worked) and 5200.0121 (Sleeping Time and Certain Other Activities), as governing determinations of an employee's hours worked for purposes of calculating the amount of ESST accrued. The effect of item A is that if an employee's time constitutes "hours worked" under Minn. R. 5200.0120 or 5200.0121, then that time counts the same for the purposes of ESST accrual.

Item A is necessary because ESST hours accrue based on the statutory rate of "one hour of [ESST] for every 30 hours worked."²⁵ The statute, however, does not define "hours worked." The cross reference to parts 5200.0120 and 5200.0121 ensures that employees and employers have a uniform and clear standard to follow when determining what time counts as "hours worked," which is critical for determining

²⁴ See Minn. Stat. § 181.9446(a)-(b) (providing minimum required annual and total ESST accruals that employers must allow employees to accumulate and allowing employers to agree to higher accrual amounts); Minn. Stat. § 181.9448, subd. 1(a) ("Nothing in sections 181.9445 to 181.9448 shall be construed to discourage employers from adopting or retaining earned sick and safe time policies that meet or exceed, and do not otherwise conflict with, the minimum standards and requirements provided in sections 181.9445 to 181.9448.").

²⁵ Minn. Stat. § 181.9446(a) (emphasis added).

the number of ESST hours accrued. Selecting the existing wage and hour administrative rules as the standard is reasonable because they are long-established Department rules. By relying upon Minn. R. 5200.0120 or 5200.0121 to define “hours worked”, item A avoids creating new and unfamiliar approaches to tracking time while allowing for predictable and fair ESST accrual.

Separately, item B of this proposed subpart covers deduction of ESST from an employee who is exempt from overtime requirements under United States Code, title 29, section 213(a)(1). This item corresponds to Minnesota Statutes, section 181.9446(c), which governs the accrual of ESST by exempt employees. The statute allows an exempt employee to accrue ESST based on a 40-hour workweek unless the employee regularly works less than 40 hours in a normal workweek. However, nothing in the statute addresses the amount of time that is deducted from an exempt employee’s ESST balance when they use ESST. Therefore, item B is necessary to protect exempt employees from ESST deductions that do not reflect their exempt status. For example, an exempt employee may typically work nine hours per day to meet business needs but is only credited ESST time based on an eight-hour workday, pursuant to section 181.9446(c). This employee should therefore only have eight hours of ESST deducted from their ESST balance rather than nine hours when they are absent for a qualifying purpose for a full work day. As this example indicates, this proposed rule mirrors the principle for exempt employees’ ESST accrual provided in section 181.9446(c). Under this item, when an exempt employee uses ESST, the employer can only deduct the amount of ESST which would have been the basis for the employee’s accrual on the day of the absence.

Notably, item B only applies when an exempt employee is absent for a full work day. In all other scenarios, the employer would deduct the number of hours the employee was absent from the employee’s ESST balance. Item B is reasonable because it adheres to the statutory language regarding a corresponding issue related to exempt employees and does not create any additional benefit to the employee or additional responsibility for the employer.

Subpart 3. Indeterminate shift.

This proposed subpart provides options for employers to determine how many ESST hours should be deducted from an employee who uses ESST for an absence from a shift that does not have a defined end time or set number of work hours (e.g., 4:00 p.m. to close). The proposed subpart is necessary because indeterminate shifts are not specifically addressed in the ESST law, leaving employers and employees unsure about how to calculate the number of hours that should be deducted from an employee’s balance when they are absent for a shift of an indeterminate length.

Item A sets forth three options for deducting hours for ESST use in sub-items 1 to 3. The proposed item directs the employer to use one of these options when determining ESST hours used by an employee for a shift of an “indeterminate length,” and that term is further clarified in this item. Sub-item A is reasonable because the employer can decide which option to use, and there is flexibility for the employer

to use a different option for each absence.²⁶ This subpart provides reasonable options while fairly tying deductions of ESST from ESST balances to lengths of time likely to approximate the number of hours the employee would have actually worked.

Item B covers situations where an employee uses ESST in the middle of working a shift of indeterminate length. The item directs the employer to use the same options in item A, but to subtract the hours actually worked by the employee before they used ESST during the shift. Item B is needed because item A only addresses absences for a full shift, and it is reasonable because it aligns with item A rather than creating a separate set of options or requirements.

5200.1203. TIME CREDITED AND INCREMENTS OF ACCRUAL.

This proposed rule addresses administrative topics related to crediting employees with accrual, including reinstating ESST previously credited to employees upon rehire. The proposed subparts are necessary to provide clarity related to when ESST must be credited to employees, how much ESST must be credited based upon hours worked, and how much ESST must be credited back to an employee upon rehire within 180 days of separation. The proposed subparts are reasonable because they align with the applicable statutory language and do not create additional administrative requirements for employers.

Subpart 1. Crediting accrual.

This proposed subpart corresponds to Minnesota Statutes, section 181.9446(e), which says, “Employees may use earned sick and safe time as it is accrued.” Some employers may understand this statute to require ESST accruals to be credited to employees in real time before the employer has had an opportunity to administratively process and record the ESST accrual in their normal course of business. Therefore, this proposed subpart is necessary to ensure employers and employees understand that ESST can be credited to an employee for use on subsequent work days in the normal course of business.

The proposed subpart clarifies that employers must credit accrued ESST to employees no later than the payday after the end of each corresponding pay period. For example, if an employer’s pay period is Saturday, June 21 to Friday, July 4, and the corresponding payday for that pay period is Friday, July 11, then the employer must credit the ESST accrued by the employee during the June 21 to July 4 pay period no later than the July 11 payday. Under this proposed subpart, an employer is not required to allow an employee to use ESST that was accrued during the same pay period but is not yet reflected or credited to the employee on their earnings statement or other reasonable ESST reporting system.²⁷

²⁶ While the employer may choose any option, two of the options are inherently self-limiting because not all employee absences will fit each option. Item A is only applicable if the employer had a replacement worker fill in for the employee using ESST. Item C is only applicable if the employer has similarly situated employees.

²⁷ See Minn. Stat. § 181.9447, subd. 10(b) (“Employers may choose a reasonable system for providing” the total number of ESST hours available and ESST hours used during the pay period.).

This proposed subpart is reasonable because it aligns the crediting of accrued ESST with the employer's normal pay periods and pay dates, and it will not require employers to modify or create new businesses processes to track and credit ESST in real time.

Subpart 2. Increment of time accrued.

Proposed subpart 2 is necessary to avoid inconsistency in employee expectations and employer application of the ESST law's accrual provision. This subpart helps to resolve an important question related to increments of accrual. Minnesota Statutes, section 181.9446(a) requires employees to accrue ESST at a minimum rate of "one hour of earned sick and safe time for every 30 hours worked." However, the statute does not directly address whether an employer is obligated to provide ESST accrual in smaller than whole hour increments. For instance, if the employee works 15 hours in a pay period, the statute does not expressly indicate whether the employee is owed one-half hour of ESST.

This proposed subpart requires only full hour increments to be credited to employees each pay period by their employer, and fractions of an hour do not need to be credited in the pay period. For example, the employer is only required to credit one ESST hour to an employee who works 40 hours in a pay period rather than 1.33 ESST hours (i.e., 40 hours divided by 30). In this situation, the employer would count the remaining 10 hours towards further accrual in the subsequent pay period.

This subpart is reasonable because it adheres closely to the statutory language in section 181.9446(a). Additionally, nothing in this subpart prohibits an employer from crediting employees with the fractional amounts of ESST each pay period if the employer would like to do so.²⁸

Subpart 3. Rehire.

This proposed subpart specifies the total amount of accrued, but unused, ESST hours that must be reinstated to an employee who separates from employment but is rehired by the same employer within 180 days pursuant to Minnesota Statutes, section 181.9448, subd. 2. The statute provides: "When there is a separation from employment and the employee is rehired within 180 days of separation by the same employer, previously accrued earned sick and safe time that had not been used or otherwise disbursed to the benefit of the employee upon separation must be reinstated."²⁹

Accrual of earned sick and safe time is addressed by section 181.9446. The section establishes, "[t]he total amount of accrued but unused earned sick and safe time for an employee must not exceed 80 hours at any time, unless an employer agrees to a higher amount." The proposed subpart is needed to clarify that the 80-hour "at any time" total applies to the reinstatement requirement in section 181.9448, subd. 2, unless, as stated in the proposed subpart, the employer agrees to a higher amount, or a higher

²⁸ For example, if an employee works 70 hours in a pay period, this proposed subpart does not prohibit an employer from crediting the employee with 2.33 ESST hours for that pay period.

²⁹ The proposed subpart addresses only the reinstatement of accrued and unused ESST that has not been disbursed or paid out to the employee upon separation.

amount is required by contract or other legal authority. The proposed subpart is reasonable because it caps the reinstatement of unused and unpaid “previously accrued earned sick and safe time” consistent with the amount of total accrual required by section 181.9446(b)(1).

The proposed subpart is also needed because section 181.9448, subd. 1(a), states that paid time off and other paid leave “in excess of the minimum amount required in section 181.9446” made available by the employer for personal illness or injury is subject to the minimum standards and requirements of the ESST law, “except for section 181.9446.” The proposed subpart addresses uncertainty regarding the application of section 181.9448, subd. 1(a) to the reinstatement requirement in section 181.9448, subd. 2. The proposed subpart clarifies that the employer is not required to reinstate more than 80 hours of accrued but unused ESST upon rehire, consistent with the 80-hour “at any time” accrual provision in section 181.9446(b)(1). The proposed subpart is reasonable because the reinstatement requirement in section 181.9448, subd. 2, specifically applies to “previously **accrued** earned sick and safe time that had not been used.” (Emphasis added). The employer-provided excess leave subject to section 181.9448, subd. 1(a), is not “accrued,” as section 181.9448, subd. 1(a), specifically excludes the accrual section of the ESST law from its application.

5200.1204. ACCRUAL AND ADVANCING METHODS.

This proposed rule addresses the manner in which: (1) an employer may advance ESST to an employee for the remainder of the year, and (2) an employer may change methods of providing ESST to an employee under Minnesota Statutes, section 181.9446. The proposed subparts are necessary to ensure advancement of ESST and accrual method changes are done in compliance with all components of the ESST law. The proposed subparts are reasonable because they do not create new requirements for employers and protect employee rights under the ESST law.

Subpart 1. Advancing hours.

Minnesota Statutes, section 181.9448, subd. 1(j), permits an employer to advance ESST time to an employee. During the 2025 legislative session, the legislature amended this provision to include additional language further prescribing how employers can advance ESST as follows:

An employer is permitted to advance earned sick and safe time to an employee based on the number of hours the employee is anticipated to work for the remaining portion of an accrual year. If the advanced amount is less than the amount the employee would have accrued based on the actual hours worked, the employer must provide additional earned sick and safe time to make up the difference.³⁰

The Department has received questions from employers who want to provide employees with ESST for the year up front when the employee begins employment rather providing “1-for-30” ESST

³⁰ Laws of Minnesota 2025, chapter 6, article 5, section 13.

accrual pursuant to section 181.9446(a). Employers have also asked for a way to prorate a frontloaded amount of ESST to employees at the beginning of employment, since the vast majority of employees will not begin their employment the first day of their employer's accrual year. The Legislature addressed this concern through the amended language in section 181.9448, subd. 1(j), and the proposed subpart is intended to further supplement and clarify this solution.

The proposed subpart ensures an employer advancing ESST remains compliant with other aspects of the ESST law, as well as making clear that an employee who receives advanced ESST is not entitled to more time than the minimum amount required to be provided by the ESST law. This proposed subpart is necessary to provide additional parameters related to advancing time in connection with new statutory language added during the 2025 legislation session and ensure advancement of ESST is done in compliance with the accrual provisions in section 181.9446(a). This proposed subpart is reasonable because it adheres to statutory language regarding advancing time to employees and does not create any additional benefit to the employee while protecting the benefits employees are entitled to regarding ESST accrual.

Item A of this proposed subpart requires an employer to calculate the amount of ESST advanced at the rate set by statute, 1 hour for every 30 hours worked.³¹ Item B informs employers and employees that the 48-hour minimum annual accrual still applies to an employer advancing ESST for the remainder of the year.³² Item C reiterates the statutory requirement for employers to ensure that employees do not receive fewer ESST hours in the event the employee works more hours for the remainder of the year than the employer had estimated when they calculated the amount of ESST to advance to the employee under section 181.9448, subd. 1(j). Item C also adds a 15-day timeframe for the employer to reconcile the employee's ESST balance in that circumstance.

The 15-day timeframe in Item C is necessary to ensure the employee continues to receive any additional ESST to which they are entitled under section 181.9446(a) and (b)(1). The 15-day timeframe is reasonable because it matches a bi-weekly pay period, plus one day, which allows employers adequate time to complete the necessary reconciliation while also ensuring an employee is not left with an inadequate ESST balance relative to their accrual for an extended period of time. It also aligns with the requirement in section 181.9446(c) that allows employees to use ESST as it is accrued.

³¹ Minn. Stat. § 181.9446(a).

³² *Id.*

Subpart 2. Changing methods.

Proposed subpart 2 requires an employer to inform employees of any change to the employer's elected ESST accrual method under Minnesota Statutes, section 181.9446(a) or (b) prior to the change taking effect and prohibits changes to the accrual method in the middle of an accrual year.³³

This provision is necessary because, although section 181.9446(a) and (b) permit three different methods for employees to receive ESST, the statute does not specify when or how an employer may switch between those methods. Without this proposed rule, employers lack a clear standard to follow when changing to a different accrual method. This proposed subpart is also necessary to ensure employers cannot alter accrual methods in a manner that is detrimental to the ESST benefits to which employees are entitled under the ESST law. For example, an employer who has frontloaded 48 hours of ESST for employees in accordance section 181.9446(b)(2), would be prohibited from zeroing out ESST balances in the middle of the year and switching to a “one-for-30” ESST accrual under section 181.9446(a). The proposed subpart also reflects the fact that the section 181.9446 methods for providing ESST are annual options and not a set of choices an employer can change at any time to the detriment of employees.

Additionally, section 181.032 is a separate statute outside of the ESST law that requires employers to provide notice to employees about changes to their employment terms, including changes related to “paid vacation, sick time, or other paid time-off accruals and terms of use.” Therefore, the proposed subpart is also necessary to highlight an obligation employers have under Minnesota law to inform employees of a change to their ESST accrual prior to the change becoming effective.

This proposed subpart is reasonable because it offers employers a clear framework for changing an employee's accrual method with minimal administrative responsibility beyond what is already required related to employee notice in section 181.032. The provision also provides two reasonable employee protections by: (1) allowing the employee to choose to maintain their old accrual method or accept to new method in situations where they are not timely informed of the change in accrual; and (2) not allowing employers to make changes to the accrual method in the middle of the year, which could impact the employee's decisions regarding use of ESST or cause other unfavorable outcomes for employees.

Subpart 3. No additional accrual necessary.

This proposed subpart is necessary to clarify that employers who choose to frontload ESST for their employees at the beginning of the accrual year pursuant to the options set forth in Minnesota Statutes, section 181.9446(b)(2), are not required to also provide those employees with “one-for-30” accrual pursuant to section 181.9446(a) during the same accrual year. The distinction between frontloading and ongoing accrual is not expressly addressed in statute, and section 181.9446(b)(2)'s focus on carryover, rather than accrual, has led employers to wonder about whether section 181.9446(a)'s “one-for-30”

³³ This proposed subpart does not apply to changes to accrual related to location of hours worked under proposed rule 5200.1202, subp. 1, item C because that proposed item includes its own notice provision.

accrual requirement applies regardless of whether the employer opts to frontload ESST at the beginning of the accrual year.

This proposed subpart is reasonable because it reflects the extent of required annual accrual in the ESST law and merely serves to clarify a point of confusion. The frontloaded amounts of 48 or 80 hours set out in statute do not require any additional accrual to be offered by the employer because an employer is only required to allow an employee to accrue up to 48 hours of ESST in an accrual year under section 181.9446(a), and the statute describes frontloading as an option by which employers provide employees with ESST “for the year”.

5200.1205. EMPLOYEE USE.

This proposed rule addresses an employee’s right to use or not use ESST for absences that qualify for ESST use. The proposed subparts are necessary to ensure employees receive the benefits of the ESST law without being subject to employer overreach through mandatory use of ESST. The proposed subparts are reasonable because they reinforce employee rights related to use while balancing those rights against an employer’s ability to discipline employees who choose to be absent without invoking the ESST law’s employee protections.

Subpart 1. No required use.

Subpart 1 of this proposed rule provides that it is an employee’s right to use, or not use, ESST for a qualifying purpose and further states that the employer cannot require an employee to use ESST. The proposed subpart is necessary to make the protection clear to employees and employers.

The proposed subpart is also needed because managing employee leave is a frequent topic for which employers seek the Department’s guidance. In particular, some employers are uncertain whether they can require ESST use if an employee is absent for a qualifying purpose. Based on the plain language of the statute, the Department has advised employers that they cannot, and the employee must still elect to use ESST. However, the frequency of questions indicates the need for an explicit rule in this area.

The proposed subpart follows the statutory provision addressing use of ESST in Minnesota Statutes, section 181.9447, subd. 1, which begins: “An employee **may** use accrued earned sick and safe time for: . . .”, followed by the list of covered ESST uses.³⁴ Per chapter 645, Interpretation of Statutes and Rules, “‘May’ is permissive.”³⁵ Additionally, the ESST law does not include any other provisions indicating employer control over the use of ESST when the employee is absent for a qualifying purpose. The plain language of the statute preserves an employee’s permissive right when absent from work to use ESST, not use ESST, or choose a different type of leave, if available. This proposed subpart is reasonable

³⁴ (Emphasis added). See also Minn. Stat. § 181.9445, subd. 4, (“‘Earned sick and safe time’ means leave . . . that may be used . . .”); Minn. Stat. § 181.9446(e) (“Employees may use earned sick and safe time as it is accrued”).

³⁵ Minn. Stat. § 645.44.

because it follows the plain language of the statute and ensures employees receive the full benefits of the ESST law without employer intrusion into employee decision-making regarding when their ESST is used.

Subpart 2 of this proposed rule further supports the reasonableness of subpart 1 by addressing a frequent follow-up employer question around leave management: the potential consequences if an employee is absent for an ESST-qualifying purpose but elects not to use ESST-protected leave.

Subpart 2. Unprotected leave.

This proposed subpart is intended to operate in conjunction with subpart 1, as noted above. If an employee decides not to use their ESST, they will not be covered by the protections of the ESST law. In this case, employers would be free to apply their regular attendance and disciplinary policies.³⁶ This proposed subpart is necessary to address situations where employers may mistakenly conclude that an absence is protected by the ESST law if the employee elects not to use ESST, or conversely, if the employer who applies their regular attendance or discipline policies to an employee's absence may have concerns about a retaliation claim by the employee if they are eligible to use ESST for the absence but nonetheless opt not to do so. Employees must accept the trade-off of being without the job protections in the ESST law if they opt not to use their ESST time when they are absent for a qualifying purpose.³⁷ The proposed subpart is reasonable because it is only applicable if the employee chooses not to use their ESST and balances employee ESST rights against employers' need to ensure a reliable workforce through attendance policies and discipline.

5200.1206. INCENTIVES.

Under Minnesota Statutes, section 181.9447, subd. 6(b), employers are prohibited from enforcing an "absence control policy or attendance point system" against employees for the use of ESST. Questions have been raised about whether incentives related to attendance or production that provide employees with monetary bonuses or other rewards are prohibited under the ESST law when employees are denied these incentives due to their use of ESST.

This proposed rule is necessary to allow employers to continue to implement policies that provide employee incentives related to attendance or production while ensuring the employee's right to be free from retaliation related to ESST use. Section 181.9447, subd. 6(b), applies to policies intended to require attendance and punish excessive absences or tardiness rather than policies that are intended to reward attendance or production. However, the Department must also consider the ESST law's broad prohibition on retaliation related to the use of ESST as stated in section 181.9447, subd. 6(a). While the proposed rule allows continued use of incentive policies, employers must ensure ESST is not treated differently than

³⁶ The Department is only referring to the application of attendance and disciplinary policies related to an employee's decision to not use their ESST for a qualifying purpose. Nothing in this discussion is intended to address other leave-related job protections that may apply to the employee's absence.

³⁷ This proposed subpart differs from a provision below in proposed rule 5200.1208, subp. 1, regarding misuse of ESST because that subpart addresses situations where an employee uses ESST for an absence that is not eligible for ESST use.

any other kind of leave under an incentive policy. The proposed rule does not allow an employer to “penalize” an employee who uses ESST, as prohibited by section 181.9447, subd. 6(a). The proposed rule primarily functions as allowing a reward, which exists above and beyond an employee’s basic terms of employment related to pay, work duties, schedule, etc. Further, the proposed rule does not allow an employer to apply such a policy to ESST any different than other forms of leave, such as vacation, thereby ensuring ESST is on the same footing under an incentive policy as all other forms of leave. Overall, the proposed rule is necessary to maintain a benefit to employees while allowing employers to provide the underlying incentive to employees who are able to achieve the associated attendance or production goals.

The proposed rule is reasonable because it allows employers to maintain policies that provide an incentive-based benefit to employees, so long as those policies are applied consistently across all leave types, thereby preventing discriminatory treatment of ESST under such a policy. The approach is also similar to other leave laws on this issue, including the Family and Medical Leave Act and Minnesota Paid Leave.³⁸

5200.1207. REASONABLE DOCUMENTATION.

Minnesota Statutes, section 181.9447, subd. 3, permits an employer to require reasonable documentation for certain uses of ESST, but it does not clearly specify the consequences for an employee who does not provide such documentation. This proposed rule is necessary to clarify that employees must comply with reasonable documentation requirements to receive the full protections of the ESST law. Without this proposed rule, there would be ambiguity regarding the enforcement of documentation provisions, potentially leading to inconsistent application, disputes, and confusion among employers and employees.

The proposed rule also provides procedural safeguards: the employer must clearly communicate the documentation requirements and give the employee a fair amount of time to respond. These protections prevent inappropriate use of the requirement by the employer and reduce the risk of arbitrary or retaliatory enforcement of the reasonable documentation requirement.

The proposed rule is reasonable because it operationalizes the intent of the ESST law’s reasonable documentation provision as a method of employee accountability while requiring clear communication from the employer and allowing employees reasonable time to supply any required documentation. Further, the proposed rule does not expand or limit an employer’s right to require documentation under the ESST law but instead ensures uniform application of the law while preserving employee and employer rights related to reasonable documentation.

³⁸ See 29 Code of Federal Regulations § 825.215(c)(2); Minn. Stat. § 268B.09, subd. 6(c)(2).

5200.1208. MISUSE OF EARNED SICK AND SAFE TIME.

The ESST law does not define nor otherwise account for employees who are improperly claiming ESST use for situations which are not eligible under Minnesota Statutes, section 181.9447, subd. 1. The Department received many comments from employers noting concerns and requesting further guidance via rule related to employees who misuse ESST, including what steps employers can take to address misuse. This proposed rule is necessary to respond to those comments and provides: (1) a definition of misuse of ESST; (2) parameters for employers who suspect misuse of ESST and wish to inquire further; and (3) restrictions on an employer's ability to deny an employee's request to use ESST due to mere suspicion or prior misuse of ESST by an employee. The proposed subparts are reasonable to clarify expectations for both employees and employers related to misuse.

Subpart 1. Misuse.

This proposed subpart defines when misuse occurs. Any claimed use of ESST for a purpose that is not covered by Minnesota Statutes, section 181.9447, subd. 1, is defined as a misuse of ESST. In those situations, the employee is not entitled to job protections found in the ESST law because the leave did not qualify as ESST-covered under the ESST law. While this proposed subpart and other subparts in this proposed rule do not prescribe the specific employment consequences for misuse, in practice an employee who misuses ESST could be subject to their employer's normal employment policies, which could result in the employer taking disciplinary action. In such a situation, the employee would not have the benefit of the job protections in the ESST law.³⁹

The proposed subpart is necessary to provide employers and employees with a clear statement indicating that ESST job protections do not apply to ESST leave when it is not taken for a qualifying purpose. The proposed subpart is reasonable because it follows plainly from the ESST law, which provides a list of qualifying purposes in the section 181.9447, subd. 1. Any use not listed therein is not subject to the ESST law, including the law's employment protections.

Subpart 2. Pattern or clear instance of suspected misuse.

This proposed subpart is necessary to provide employers with some level of recourse related to misuse of ESST by allowing employers to request reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subd. 3(b) to (f), when an employer identifies a pattern or clear instance of suspected misuse by an employee. The proposed subpart provides examples of a pattern or clear instance of suspected misuse to demonstrate the types of situations described in comments to the Department that employers may experience. Specifically, items A and B are related to patterns of

³⁹ The Department did not include any specific consequences for misuse in this proposed subpart or elsewhere because employers are best positioned to determine discipline in the context of their employment-specific policies. However, the Department notes that subpart 3 of the proposed rule specifically limits an employer's ability to take disciplinary or corrective action in the form of denying future ESST use. See the explanation for that proposed subpart for further information.

suspected misuse, item C is related to a clear instance of suspected misuse, and item D may relate to either a pattern or clear instance of suspected misuse.

The Department has received extensive feedback from employers seeking clarification about whether they are allowed to inquire about an employee's use of ESST at any time besides situations in which an employee has used ESST for at least two consecutive days.⁴⁰ More specifically, the law provides no specific mechanism for employer recourse when an employee misuses ESST (i.e., not for a qualifying purpose).

This proposed subpart is reasonable because it aligns with the purpose of section 181.9447, subd. 3. Section 181.9447, subd. 3, functions as a safeguard against ESST misuse and otherwise ensures ESST is used in accordance with the ESST law (i.e. only for qualifying purposes).

Additionally, this proposed subpart is reasonable because an employer who suspects misuse under this proposed subpart must still comply with the limits on reasonable documentation imposed by section 181.9447, subd. 3(b) to (f). In many situations, an employee will be able to self-verify their use of ESST through a written statement indicating the use was for a qualifying purpose. Additionally, this proposed subpart should be read in connection with proposed subpart 3 of 5200.1208, which limits an employer's ability to restrict an employee's use of ESST based on past misuse or future anticipated misuse, thereby protecting employees from overreach under this proposed subpart by employers.

To further support the reasonableness of this proposed subpart, the Department identified other states with sick and safe time administrative rules or statutory provisions related to employee misuse. Massachusetts and Rhode Island explicitly allow for an employer to pursue discipline when an employee is suspected of misuse. Massachusetts's provision states, "If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of earned sick time, unless the employee provides verification of authorized use under M.G.L. c. 149, section 148C."⁴¹ Rhode Island has a statutory provision stating, "If an employee is exhibiting a clear pattern of taking leave on days just before or after a weekend, vacation, or holiday, an employer may discipline the employee for misuse of paid sick and safe leave, unless the employee provides reasonable documentation."⁴² Oregon's misuse rule allows an employer to "require verification from a health care provider of the need of the employee to use sick time" if the employer "reasonably suspects that an employee is abusing sick time, including engaging in a pattern of abuse."⁴³ These

⁴⁰ The Department's comment periods in 2024 and 2025 preceded a legislative amendment that reduced the threshold from three consecutive days to two consecutive days of ESST before the employer can require reasonable documentation. Laws of Minnesota 2025, chapter 6, article 5, section 11.

⁴¹ 940 Code of Massachusetts Regulations § 33.03(24).

⁴² Rhode Island General Laws § 28-57-6(j).

⁴³ Oregon Administrative Rules 839-007-0045(11).

provisions also highlight the need for rulemaking on this issue where the statute does not clearly indicate a reasonable method of employer inquiry related to suspected employee misuse.

Subpart 3. No restriction on use.

This proposed subpart prohibits an employer from denying an employee use of ESST based on prior misuse or future suspected misuse. This proposed subpart was added to (1) ensure employees receive the protections under the ESST law for compliant use of ESST, even in situations where the employee misused ESST in the past or is suspected of misusing ESST, and (2) make clear to employers that mere suspicion of misuse is not sufficient to deny an employee the right to use ESST. If the employer has a suspicion of misuse under subpart 2 of this proposed rule, the employer cannot deny the employee the right to use ESST but may require reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subd. 3(b) to (f).

If the reasonable documentation or other evidence indicates misuse, then employers may rely on the second sentence of this proposed subpart to discipline the employee, which says, “Misuse of earned sick and safe time is not subject to protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448, and may be subject to discipline by the employer.” Whether such discipline may include the denial of ESST is limited to scenarios where the employer confirms the misuse (i.e. not mere suspicion of misuse) prior to the employee using ESST for the absence. In situations where the employer confirms misuse after the employee has used ESST, the employer may not deny future ESST use.

This proposed subpart is necessary to protect employees from employer overreach under this proposed rule, which could occur through denial of ESST based on past misuse. This proposed subpart is also necessary to provide employers with a clear pathway to discipline employees who misuse ESST. The proposed subpart is reasonable because it balances the ESST law’s employee protections with employer interests in protecting business operations and the integrity of their employment policies by being able to discipline employees who misuse ESST.

5200.1209. MORE GENEROUS SICK AND SAFE TIME POLICIES.

The proposed rule addresses two separate but interrelated issues located in Minnesota Statutes, section 181.9448, subd. 1(a). One proposed subpart is necessary to articulate a key principle related to ESST protections and paid leave in excess of the minimum amount required under the ESST law. A second proposed subpart is necessary to confirm that Minnesota Paid Leave, under Minnesota Statutes, chapter 268B, is considered a “salary continuation benefit” as that term is used in section 181.9448, subd. 1(a), and therefore not subject to ESST protections under that statutory provision. Both proposed subparts are reasonable clarifications of statutory language.

Subpart 1. Excess paid time off.

Minnesota Statutes, section 181.9448, subd. 1(a), includes the following provision, which was enacted during the 2024 legislative session:

All paid time off and other paid leave made available to an employee by an employer in excess of the minimum amount required in section 181.9446 for absences from work due to personal illness or injury, but not including short-term or long-term disability or other salary continuation benefits, must meet or exceed the minimum standards and requirements provided in sections 181.9445 to 181.9448, except for section 181.9446.⁴⁴

The statutory provision makes any employer-provided paid time off in excess of the required ESST amount subject to the ESST protections in sections 181.9445, and 181.9447-.9448, except for paid time off that is considered a salary continuation benefit, if the paid time off can be used for absences due to “personal illness or injury.” The proposed subpart confirms that the statutory provision applies ESST protections to this type of paid leave *only* when the leave is used for a qualifying purpose under the ESST law. To interpret the provision otherwise is unreasonable and would lead to absurd results not intended by the Legislature.⁴⁵ For instance, if the ESST protections could apply to such leave when *not* used for an ESST-qualifying purpose, then an employer who provides a single bank of leave for all purposes (i.e. vacation, sick time, etc.) would be made to offer ESST protections to their employees for any conceivable use, such as personal vacations and other personal outings, which are not eligible uses of ESST under section 181.9447, subd. 1. Therefore, this proposed subpart is reasonable because it codifies that ESST protections only attach when paid time off is used for a qualifying purpose in accordance with the ESST law.

The Department received more comments related to this statutory provision than any other provision in the ESST law. Many of the comments indicated uncertainty about the meaning and operation of this statutory provision. Therefore, this proposed subpart is necessary to provide clarity for employers and employees. Without this proposed subpart, there is risk of employers using different approaches across Minnesota on a key issue affecting many employers (i.e., those who offer paid time off to their employees). A rule on this issue is critical.

Subpart 2. Salary continuation benefits.

This proposed subpart addresses a specific concern related to the interplay between the ESST law and the Minnesota Paid Leave program under Minnesota Statutes, Ch. 268B, which will take effect on January 1, 2026. Minnesota Paid Leave provides between 12 and 20 weeks of annual family and medical leave and partial wage replacement to individuals who qualify. The Department has heard from stakeholders regarding their concerns about whether Minnesota Paid Leave is subject to the language described in the analysis of subpart 1 above from Minnesota Statutes, section 181.9448, subd. 1(a), or whether it is considered a “salary continuation benefit” that is excepted from that provision. This proposed subpart is reasonable because benefits provided under the Minnesota Paid Leave program are “salary continuation benefits” similar to short-term or long-term disability benefits, which are utilized to continue

⁴⁴ Laws of Minnesota 2024, chapter 127, article 11, section 15.

⁴⁵ See Minn. Stat. § 645.17 (“In ascertaining the intention of the legislature the courts may be guided by the following presumptions: (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable[.]”)

a portion of the employee's salary for extended periods of leave. Short-term and long-term disability are also explicitly listed as examples of "salary continuation benefits" in section 181.9448, subd. 1(a).

Regulatory Analysis

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. The sections below quote these factors and then give the Department's response.

Classes Affected

A description of the classes of persons who probably will be affected by the proposed rules, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The classes of persons who will be affected by these proposed rules includes nearly all employers and employees in Minnesota. Nearly all employers in Minnesota will bear the costs, if any, of compliance with these rules. Only a few types of workers are not eligible for ESST, including independent contractors, volunteer or paid on-call firefighters, elected or appointed officials, and certain farm workers.⁴⁶ Employers and employees will benefit from the proposed rules, which provide clarity about how the ESST law applies to certain issues and situations. While some proposed rule provisions may be more relevant to certain types of employees or employers, none of the proposed rules operate to be more beneficial or burdensome to any particular type of employer or employee. However, the Department has identified one proposed subpart that merits additional discussion.

5200.1202, Subp. 1 – Location of Hours Worked

This proposed subpart will affect employers with ESST-eligible employees who regularly work in other states. These employers will be required to provide their multi-state employees with ESST accrual for all hours worked, regardless of location, if those employees work more than 50% of their hours in Minnesota. Additionally, employers with multi-state employees who are unsure about whether their employees work 50% or less of their time in Minnesota will need to make a good faith determination to answer that question.

Employers who were providing ESST accrual for only hours worked in Minnesota prior to the anticipated adoption of these proposed rules may be required to provide additional ESST accrual under this proposed subpart, up to the minimum amounts required in Minnesota Statutes, section 181.9446 (i.e., 48 hours per accrual year), for any employee anticipated to work the majority of their hours in Minnesota

⁴⁶ Minn. Stat. § 181.9445, subd. 5.

during a year.⁴⁷ Additionally, these employers may incur nominal administrative costs related to making good faith determinations as to whether their employees are anticipated to work 50% or less of their hours in Minnesota. The affected employees will benefit by receiving full ESST accruals for their hours worked and potentially being able to use more leave for ESST qualifying purposes, which directly benefits the employee and their family's health and safety. The proposed subpart also benefits employers by providing a clear, uniform standard for determining when out-of-state hours must be included for accrual purposes, thereby reducing the risk of noncompliance. Overall, the ESST law was enacted to provide employees with time off for qualifying purposes because healthier and safer workforces and families provide a net benefit to the State of Minnesota. Therefore, the Department believes the benefits to these multi-state employees outweighs any potential costs or burden to the affected employers.

Department/Agency Costs

The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rules and any anticipated effect on state revenues.

The Department does not anticipate any additional costs to itself or any other state agency in implementing these rules. The only proposed rule that requires an additional administrative task is proposed rule 5200.1202, subp. 1, item B, related to location of hours worked. Under item B, an employer providing accrual of 1 hour of ESST for every 30 hours worked pursuant to Minnesota Statutes, section 181.9446(a) must make a good faith determination of their employees' anticipated work locations to justify restricting employee accrual. Most, if not all, state employees already receive paid leave sufficient to meet the minimum amounts required by the ESST law. Therefore, the application of this administrative task for state agencies is minimal or entirely absent, and the Department does not anticipate any impact on state revenues. Additionally, the Department did not receive any comments from state agencies indicating concerns about proposed rule 5200.1202, subp. 1.

The Department also evaluated whether the proposed rules would increase any costs to itself as a regulator. The Department concluded that the proposed rules will not increase costs to the Department in its investigations or provision of technical assistance to employers and employees, with the exception of the time needed to review and update its frequently asked questions on its website. Ultimately, the Department anticipates that adoption of the proposed rules will better ensure compliance without additional cost.

⁴⁷ The minimum annual accrual of 48 hours required under Minn. Stat. § 181.9446 equates to 1,440 hours worked in a year. The proposed subpart will not affect employers with ESST-eligible employees who already work this number of hours in Minnesota.

Less Costly or Intrusive Methods

A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rules.

The proposed rules are intended to clarify the ESST law rather than create new requirements resulting in costs to stakeholders. To the extent employers have borne costs related to ESST, those costs are the result of the ESST statutes enacted by the Legislature. The proposed rules are largely cost-neutral, and some proposed rules may actually limit costs for employers by, for example, providing a framework for inquiring about misuse of ESST and deterring such misuse. Some employers may incur minimal costs related to making good-faith determinations under proposed rule 5200.1202, subp. 1 (Location of Hours Worked). However, the Department determined there was no less intrusive method for ensuring employees receive all ESST accrual to which they are entitled under the ESST law. The Department has not identified any other proposed rule which may increase costs for employers. Therefore, the Department has determined there are no less costly or less intrusive methods for achieving the purpose of the proposed rules, and any costs associated with the proposed rules are minimal and reasonably justified.

Alternative Methods

A description of any alternative methods for achieving the purpose of the proposed rules that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

The Department considered a number of options when drafting the proposed rules. The considerations involved review of ESST programs and regulations from other states, extensive stakeholder outreach and feedback, and internal analysis and experience gained from nearly two years of ESST enforcement and education since the law was enacted. Specifically, the Department evaluated alternatives for the proposed rules below.

5200.1202, Subp. 1 – Location of Hours Worked

The Department considered an alternative rule suggested by commenters that would limit employees' accrual of ESST to only those hours worked in Minnesota. After consideration, the Department concluded that such a rule would be overly narrow and unfairly limit an employee's right to accrue ESST. The proposed subpart reflects the full extent of employee rights on this issue while the alternative would deny an employee's ESST accrual for nominal hours worked outside of Minnesota, as well as greater amounts of hours worked outside the state, even when the employee has a more significant connection to Minnesota than to any other state. For example, an employee who works 85% of their hours in Minnesota could lose out on ESST accrual for the other 15% of their hours worked, even though the employee spends nearly all their work time in Minnesota. Such an employee is clearly subject to

employment laws in Minnesota because it is their primary location of work, and it does not follow that the employee's ESST accrual should be limited based on hours worked outside of Minnesota.

There are several states with similar approaches to this topic. Massachusetts, Rhode Island, and Vermont use a "primary place of work" standard to determine whether an employee is considered an employee of their state. In Massachusetts and Rhode Island, the primary place of work standard only requires the employee to work in the benefit-providing state more than any other state, which could be less than 50% of their work hours.⁴⁸ Vermont utilizes the "primary location of work" standard more generally.⁴⁹ Further, these states also mandate that an employee who primarily works in their state is entitled to accrue their equivalent of ESST benefits for all hours worked, regardless of location.⁵⁰ These states offer a close comparison and reinforce the reasonableness of this proposed subpart.

Further, this proposed subpart was drafted to advance administrative fairness and practical enforceability by: (1) utilizing a good-faith standard that does not require retroactive accrual for employees designated as working less than 50% in Minnesota who end up working more than 50% in the state; (2) allowing employers to adjust ESST accrual for a significant change in circumstances, including circumstances resulting in less ESST accrual because the changed circumstances cause the employee to work the majority of their hours outside Minnesota; and, (3) allowing for any conflicting laws in other jurisdictions outside Minnesota to override or preempt the proposed subpart. Therefore, the proposed subpart is a reasonable and appropriate method to reflect the full extent of required ESST accrual under the ESST law while also providing safeguards for employers and other jurisdictions outside Minnesota.

5200.1202, Subp. 3 – Indeterminate Shift

The Department's initial draft of this proposed subpart, which was published as part of the second comment period, was more prescriptive by requiring a sequential order of application for the methods to determine the amount of ESST used when an employee takes leave from a work shift of an indeterminate length. Commenters requested more flexibility in the application of these methods and noted concerns about any method that required calculation, such as determining average hours worked. The Department

⁴⁸ See 940 C.M.R. § 33.03(1) ("An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Massachusetts regardless of the location of the employer. An employee need not spend 50% or more time working in Massachusetts for a single employer in order for Massachusetts to be the employee's primary place of work."); 260 Rhode Island Code of Regulations § 30-05-5.5.2.A and B (2025) ("A. An employee is considered to be employed in Rhode Island if their primary place of employment within the last twelve (12) months was in Rhode Island regardless of the location of their employer. B. An employee need not spend fifty percent (50%) or more of their time working in Rhode Island to be considered a Rhode Island employee, so long as the employee spends more time working in Rhode Island than in any other state.").

⁴⁹ Code of Vermont Rules 24-010-014-4(a) ("An employee is eligible to accrue and use earned sick time if the employee's primary place of work is in Vermont, regardless of the primary location of the employer.").

⁵⁰ See 940 C.M.R. 33.03(2) ("If an employee is eligible to accrue and use earned sick time, then all hours the employee works must be applied toward accrual of earned sick time regardless of the location of the work and regardless of the location of the employer."); 260 R.I. Code Regs. § 30-05-5.5.2.C (2025) ("If an employee is eligible to accrue and use PSSSL benefits, all hours worked by that employee and all hours they are paid for, regardless of the location of the work or the employer, shall be counted while accruing PSSSL benefits."); and C.V.R. 24-010-014-4(a) ("If an employee is eligible to accrue and use earned sick time, then all hours the employee works shall be applied toward accrual of earned sick time regardless of the location of the work.").

agrees that more flexibility in this proposed subpart is reasonable, so this subpart was adjusted to leave the choice of method to the employer's discretion. Although two of the options are only applicable in certain situations (i.e., one method requires there to be a "replacement worker" and another method requires there to be "similarly situated employees"), the employer can choose their preferred method when more than one method is applicable.

The Department considered whether the proposed subpart was detrimental or beneficial to employees. On the one hand, an employer may utilize a method resulting in the greatest amount of ESST deducted from the employee's ESST balance, which provides the employee with the most compensation for their absence. On the other hand, an employer may utilize a method resulting in the least amount of ESST deducted from the employee's ESST balance, which provides the employee with the least compensation for their absence, but also more ESST time for future use. Whether one outcome is better than the other may depend on employee preference, and the Department did not receive any comments indicating a preferred approach. Any rule allowing the employee to choose the applicable method would have created additional administrative responsibility for the employer by requiring additional communication with employees using ESST to determine their preferred method. Such an approach is likely to result in unnecessary disputes between employers and employees. Therefore, the approach in the proposed subpart focused on providing reasonable methods of calculation while giving employers flexibility to choose the method that best fits their operations.

In drafting the options included in this proposed subpart, the Department carefully considered similar statutes and rules from other jurisdictions. The Department modeled the options for calculating ESST hours for indeterminate shifts based on rules found in New Mexico, Oregon, and Washington.⁵¹ The similarities across these other jurisdictions' rules further supports the reasonableness of this proposed subpart.

5200.1205, Subp. 1 – No Required use

The Department received comments questioning whether employers could require employees to use ESST concurrently with the Family and Medical Leave Act ("FMLA") because the FMLA allows employers to require the substitution of paid leave while on FMLA leave.⁵² Given those comments, the Department considered adopting a rule that would provide an exception to the employee right to choose whether to use or not use ESST that would allow employers to require ESST use in situations where the employee's leave is also subject to the FMLA.

The Department identified several reasons for not adopting such a rule. First, the ESST law allows employees to determine whether to use ESST, and such a rule would curtail employee rights related to use

⁵¹ See New Mexico Administrative Code § 11.1.6.8.D; Or. Admin. R. 839-007-0035; Washington Administrative Code § 296-128-670(4).

⁵² See 29 United States Code § 2612(d)(2); 29 C.F.R. § 825.207.

of ESST. Second, nothing in the ESST law authorizes employers to require use of ESST in relation to FMLA leave or in any other situation. Third, beginning in 2026, Minnesota Paid Leave⁵³ will prohibit employers from requiring the use of paid time off, including sick time, concurrently with Minnesota Paid Leave.⁵⁴ While Minnesota Paid Leave and FMLA leave may run concurrently, FMLA leave does not supersede Minnesota Paid Leave on the issue of employer-mandated concurrent use of paid leave, including use of ESST.⁵⁵ Fourth, at least one other ESST jurisdiction has promulgated a similar rule protecting employees' right to use ESST at their sole discretion.⁵⁶

The Department also received comments regarding a similar issue related to FMLA leave and the requirement under Minnesota Statutes, section 181.9448, subd. 1(a), that all paid time off made available for "personal illness or injury" in excess of the ESST minimum amount be subject to ESST protections when used for a qualifying purpose. This ESST statutory provision may lead to a scenario for an employer who offers generous paid time off in which an employee takes FMLA leave for the allowed 12 weeks and subsequently uses their paid leave balance to take additional ESST leave related to their serious health condition, resulting in job-protected absences extending beyond 12 weeks. Even so, for this scenario to occur, the employee would need to qualify for leave under both the FMLA and ESST over an extended time period, which would further indicate the seriousness of the circumstances and the employee's need for leave. While the Department acknowledges the interplay between section 181.9448, subd. 1(a), and the employee's right to use ESST at their discretion may lead to this outcome in the narrow circumstances in which an employee only has access to FMLA and not Minnesota Paid Leave, such outcomes are not anticipated to be a common occurrence and do not outweigh the need to protect employees' rights to use ESST.⁵⁷

⁵³ See Minn. Stat. §§ 268B.001-.30.

⁵⁴ Minn. Stat. § 268B.27, subd. 2.

⁵⁵ See 29 U.S.C. § 2651(b) ("Nothing in this Act or any amendment made by this Act shall be construed to supersede any provision of any State or local law that provides greater family or medical leave rights than the rights established under this Act, or any amendment made by this Act."); See also 29 C.F.R. § 825.701 ("Nothing in FMLA supersedes any provision of State or local law that provides greater family or medical leave rights than those provided by FMLA.").

⁵⁶ The State of Washington's ESST rules include the following provision under W.A.C. 296-128-630(1): "An employee is entitled to use paid sick leave for the authorized purposes outlined in RCW 49.46.210 (1)(b) and (c). This right means an employee has the choice about whether to use accrued, unused paid sick leave when a qualified purpose occurs and an employer may not require an employee to use accrued, unused paid sick leave if the employee does not choose to request to use paid sick leave."

⁵⁷ Minnesota Paid Leave has different eligibility requirements than FMLA. The Minnesota Paid Leave wage requirements under Minn. Stat. § 268B.04, subd. 2, require an employee to have "wage credits of at least 5.3 percent of the state's average annual wage rounded down to the next lower \$100." Minnesota Paid Leave does not include a waiting period before an employee is eligible for benefits. In comparison, FMLA requires an employee to have worked for the employer for at least 12 months and have worked for at least 1,250 hours in the 12 months prior to taking FMLA, and some small businesses are excluded from FMLA. See 29 U.S.C. § 2611(2). Therefore, the Department anticipates that the vast majority of employees in Minnesota will be eligible for Minnesota Paid Leave if they are eligible for FMLA, and some employees will only be eligible for Minnesota Paid Leave but not FMLA.

5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse

The Department’s initial draft of this proposed subpart was limited to “patterns of misuse” of ESST and included a limited set of circumstances which qualified, thereby limiting employers to relying on this proposed subpart in only the circumstances explicitly described therein. The Department received comments requesting the Department broaden this provision so that the circumstances described function as a non-exclusive list of examples in which the proposed subpart would apply. After further consideration, the Department determined that the proposed subpart is more reasonable with a non-limited list of examples and better aligns with state regulatory policy as described in Minnesota Statutes, section 14.002, by providing more flexibility to employers to identify patterns or clear instances of suspected misuse of ESST. In response, the Department redrafted the proposed subpart to provide broader applicability and added additional examples of suspected misuse to better illustrate the intent of the proposed subpart. While some employees and employee-advocacy groups or labor organizations may have concerns about potential employer overreach, the proposed subpart merely functions to allow employers to rely on the reasonable documentation procedure found in section 181.9447, subd. 3, when misuse is suspected, and these procedures are flexible and accommodating to employees.

Costs to Comply

The probable costs of complying with the proposed rules, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The Department determined that the proposed rules themselves are cost-neutral for all parties, as affected parties are already required to comply with the ESST law, and the proposed rules do not add additional costs. The Department notes that proposed rule 5200.1202, subp. 1, potentially impacts the required amount of ESST accrual for employees who work more than 50% of their hours in Minnesota and whose employers had limited their ESST accrual based on the employee working some hours outside of the state. The proposed subpart requires all hours worked by employees who predominantly work in Minnesota to be subject to ESST accrual regardless of location. ESST accrual is also limited by the 48-hour annual accrual limit and 80-hour total limit set forth in Minnesota Statutes, section 181.9446(b)(2), which will minimize any impact of additional accrual required under this proposed subpart for multi-state employees. Moreover, to the extent employers may be required to provide additional accrual, the additional accrual itself is not a cost. Therefore, any potential costs directly associated with proposed rule 5200.1202, subp. 1, are limited to nominal administrative functions of making good-faith determinations pursuant to items B and C of the proposed subpart. Good-faith determinations are not intended to be onerous for employers and only require evaluation of the employee’s anticipated work schedule and locations of work. Employers with highly transient workforces will likely develop streamlined approaches to this task or perhaps opt instead to avoid application of the proposed subpart by relying on the frontloading methods in section 181.9446(b)(2). The Department expects any additional administrative

costs to employers affected by proposed rule 5200.1202, subp. 1, to be de minimis. No other proposed rules require analysis on this issue.

Costs of Non-Adoption

The probable costs or consequences of not adopting the proposed rules, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

No particular class of employer, employee, or other stakeholder is predominantly affected by the proposed rules. However, all stakeholders would be negatively impacted without these proposed rules. Each proposed rule is intended to clarify the ESST law and establish clear standards for all parties regarding the administration of ESST benefits. The consequences of non-adoption include less consistent administration of ESST by employers and uncertainty about key topics in the ESST law, including the extent of ESST accrual required, crediting ESST accrual to employees, changing accrual years and methods, reasonable documentation, employee misuse, and the application of Minnesota Statutes, section 181.9448, subd. 1(a) to more generous leave policies. Several rules merit further discussion.

5200.1202, Subp. 1 – Location of Hours Worked

If this proposed subpart is not adopted, employees who work in multiple states but work more than 50% of their hours in Minnesota may not get the benefit of the maximum ESST accrual to which they are entitled. Additionally, because the ESST law does not expressly address this issue, non-adoption of this proposed subpart will likely result in inconsistent application across the state for businesses who have employees working in multiple states. Such inconsistencies would create costs related to employer-employee disputes on the issue. The proposed subpart resolves a key issue and provides employers and employees with a roadmap for determining the amount of ESST accrual to which each employee is entitled based on the location of their work.

5200.1205, Subp. 1 – No Required Use

If this proposed subpart is not adopted, a key issue will be left open to different applications, some of which have been proposed to the Department in the comment periods. Additionally, the Department has already encountered scenarios in which employers have attempted to compel an employee to use ESST against the employee's wishes. Therefore, the issue is not hypothetical or speculative.

The ESST law requires an answer to the question of whether employers have the ability to require employees to use ESST when they are absent for a qualifying purpose. Without a rule answering this question, there is significant risk of employer-employee disputes, varying administrative approaches, and additional compliance and enforcement efforts by the Department. Simply put, this issue demands an answer. This proposed subpart provides a clear answer that is supported by the statutory language and does not conflict with any provision in the ESST law.

5200.1208, Subp. 2 – Pattern or Clear Instance of Suspected Misuse

If this proposed subpart is not adopted, employers and employees will lack regulatory guidance about whether there are situations other than the circumstance described in Minnesota Statutes, section 181.9447, subd. 3(a), in which an employer may require reasonable documentation from an employee. Without this proposed subpart, employers may feel they lack the ability to inquire further about suspected misuse because the ESST law does not articulate the extent of the employer's authority to take limited, evidence-based steps to verify proper use of ESST using reasonable documentation in accordance with section 181.9447, subd. 3(b)-(f). Separately, the proposed subpart provides notice that misuse of ESST may result in further employer inquiry and incentivizes employees to only use ESST for qualifying purposes, thereby protecting the integrity and legitimate purposes of the ESST law.

5200.1209, Subp. 1 – Excess Paid Time Off

If this proposed subpart is not adopted, employers may implement inconsistent interpretations of Minnesota Statutes, section 181.9448, subd. 1(a). The Department received comments suggesting differing interpretations or other rule approaches, which further highlights the likelihood of inconsistency and the need for a clear rule in this area. The Department also received comments with concerns about this statutory provision and noting uncertainty about how to comply. Therefore, this proposed subpart is critical to clarify how employers should apply this statutory provision when employees use paid leave that exceeds the minimum amounts required by the ESST law for a qualifying purpose.

Differences from Federal Regulations

An assessment of any differences between the proposed rules and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

There are currently no federal regulations related to employees receiving paid sick and safe time leave from work. FMLA is unpaid leave most commonly used for an employee or their family member's serious health condition, or childbirth and newborn care, and is typically taken for longer-term absences. In comparison, ESST is primarily used for short-term absences related to a health condition or personal safety, and the law only requires up to 48 hours of annual accrual and 80 hours of total accrual. FMLA is more comparable to Minnesota Paid Leave under Minnesota Statutes, chapter 268B, than the ESST law. The Department has not identified or otherwise been made aware of relevant differences between FMLA regulations or any other federal regulations and the proposed rules. Therefore, a specific need and reasonableness analysis on this issue is not necessary.⁵⁸

⁵⁸ However, see the discussion above of FMLA as it relates to proposed rule 5200.1205, subp. 1, regarding concurrent use of ESST and FMLA.

Cumulative Effect

An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the proposed rules.

Proposed rule 5200.1205, subp. 1, clarifies that the ESST law prohibits employer-mandated ESST use during an employee's FMLA leave or any other situation. No other proposed rules affect federal or state regulations. The proposed rules do not create any cumulative regulatory burden related to the specific purpose of the proposed rules.

The Department has broad rulemaking authority related to the ESST law under Minnesota Statutes, section 177.50, subd. 6. The enabling statute allows the Department to "adopt rules to carry out the purposes" of the ESST law. To that end, the proposed rules are intended to provide clarification and guidance related to key issues in the ESST law, and the proposed rules are not intended to affect other federal or state regulations.

Notice Plan

Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of its efforts to provide additional notification to persons or classes of persons who may be affected by the proposed rule or must explain why these efforts were not made.

Required Notice

The Department is required under Minnesota Statutes, chapter 14 to identify and send notice to several groups. The steps the Department will take to meet those statutory requirements are laid out in detail below.

Consistent with Minnesota Statutes, section 14.14, subd. 1a, on the day the Dual Notice is published in the *State Register*, the Department will send via email or U.S. mail a copy of the Dual Notice and the proposed rule to the contacts on the Department's list of all persons who have registered with the Department for the purpose of receiving notice of rule proceedings. There are approximately 15 people on the Department's list of persons who have requested notice via United States Postal Service, and approximately 78,000 persons who have requested notice of all rule proceedings via GovDelivery. The Dual Notice will be sent at least 33 days before the end of the comment period.

Consistent with section 14.116(b), the Department will send a copy of the Dual Notice, a copy of the proposed rules, and a copy of the SONAR to the chairs and ranking minority party members of the applicable policy committees and the Legislative Coordinating Commission. These documents will be sent at least 33 days before the end of the comment period.

Consistent with section 14.131, the Department will send a copy of the SONAR to the Legislative Reference Library when the Dual Notice is sent.

Section 14.116(c) requires the Department to “make reasonable efforts to send a copy of the notice and the statement to all sitting legislators who were chief house of representatives and senate authors of the bill granting the rulemaking authority” if it is within two years of the effective date of the law granting rulemaking authority. A copy of the notice will be provided to Representative Aisha Gomez and Senator Ann Rest.

Section 14.111 requires the Department to provide the commissioner of agriculture with a copy of the proposed rule change if the agency plans to adopt or repeal a rule that affects farming operations. Although these proposed rules are new rules and not rule changes, the Department will provide the commissioner of agriculture with a copy of the proposed rules.

Additional Notice

The Department submitted an Additional Notice Plan (“ANP”) to the Court of Administrative Hearings (“CAH”) for review on July 5, 2024. The ANP was reviewed and approved by Administrative Law Judge, Megan J. McKenzie, on July 10, 2024.⁵⁹

The Department intends to send an electronic notice with a hyperlink to electronic copies of the Dual Notice, SONAR, and the proposed rules:

- Department of Labor and Industry’s Rulemaking List (for Labor Standards updates)
- Individuals subscribed to the *Wage & Hour Bulletin*;
- Individuals subscribed to the Department’s Labor Standards and Earned Sick and Safe Time (“ESST”) Rulemaking Notice lists;
- Individuals and entities subscribed to the Department’s webinar announcement lists;
- Grantee organizations who have worked on ESST outreach in 2023 or 2024;
- Approximately 380 employer associations, chambers of commerce, and other organizations representing employers in Minnesota
- Interested state legislators, including bill authors;

⁵⁹ Exhibit 2, Judge McKenzie’s approval of the ESST Additional Notice Plan, dated July 10, 2024.

- City-level enforcement offices in Minneapolis, St. Paul, and Bloomington, Minnesota;
- Individuals at state agencies that have a close connection to the impacts of ESST rules; and
- Individuals who requested a copy of the ESST rule draft during the Department’s first comment period for this rulemaking.

Under Minnesota Statutes, section 14.14, subd. 1a, the Department believes its regular means of notice, including publication in the *State Register* and the *Wage & Hour Bulletin*, will adequately provide notice of this rulemaking to persons interested in or regulated by these rules.

Performance-Based Rules

Minnesota Statutes, section 14.002, requires state agencies, whenever feasible, to develop rules that are not overly prescriptive and inflexible, and rules that emphasize achievement of the Department’s regulatory objectives while allowing maximum flexibility to regulated parties and to the Department in meeting those objectives.

The Department’s regulatory objectives in this rulemaking are to provide clarity and guidance on key issues in the ESST law. The Department has met those objectives without proposing overly prescriptive and inflexible rules. Wherever possible, the Department has opted to provide options in the proposed rules rather than inflexible mandates. For example, proposed rule 5200.1202, subp. 3, regarding shifts of an indeterminate length includes a list of options for determining the amount of ESST hours used by an employee who is absent for such a shift rather than mandating one particular approach. Similarly, proposed rule 5200.1208, subd. 2, regarding patterns or clear instances of suspected misuse of ESST, was developed to include examples of how misuse may occur rather than a limited set of circumstances in which misuse can apply, thereby allowing employers flexibility to apply the proposed subpart to other situations of suspected misuse that may occur.

The Department has also focused on developing rules consistent with the statutory language where clarification is necessary to ensure consistent and fair administration of ESST benefits by employers. The proposed rules provide clarity for employers and allow the Department to better serve its roles as a regulator and source of technical assistance. While some rules prescribe certain parameters for ESST administration, accrual, and use, on the balance the proposed rules are geared towards clarification rather than adding new requirements or prohibitions and are not overly prescriptive and inflexible.

Consultation with MMB on Local Government Impact

As required by Minnesota Statutes, section 14.131, the Department consulted with Minnesota Management and Budget (“MMB”). The Department provided this SONAR and the proposed rules to MMB on August 19, 2025. On October 1, 2025, MMB provided a letter to the Department stating, in part:

“Upon review, there are no substantial concerns about the proposed rules. The proposed rules primarily provide new clarity and guidance about existing ESST policies based on formal and informal stakeholder feedback. Overall, the proposed rules should not create additional costs because affected parties already must comply with ESST law. The proposed rules for accrual may have a nominal fiscal cash flow impact on local governments because they may result in additional administrative costs, depending on how local governments currently track employee hours. Though exact costs are unknown, DLI states that cost of compliance will not be greater than \$25,000 for any small city.”⁶⁰

Impact on Local Government Ordinance and Rules

Minnesota Statutes, section 14.128, subd. 1, requires an agency to make a determination of whether a proposed rule will require a local government to adopt or amend any ordinances or other regulation in order to comply with the rule. The Department has determined that no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules. The Department based this determination on the following factors:

1. Notice was provided to local governments regarding both comment periods related to this rulemaking;⁶¹
2. The Department received comments from some local governments and local government associations, and none of those comments identified or otherwise indicated necessary changes to local laws in relation to any proposed rules; and
3. The Department regularly confers with local governments that have their own ESST laws.⁶² These local governments understand they can still follow and enforce their laws where those laws do not violate the minimum standards and requirements of the state ESST law because the state ESST law sets a legal floor, not a ceiling. The Department’s Labor Standards Division regularly coordinates enforcement with these local governments, and no local governments have communicated concerns about necessary changes to their local ordinances and rules in relation to these proposed rules.

⁶⁰ Exhibit 3, MMB’s letter to the Department, dated October 1, 2025.

⁶¹ The second RFC published by the Department in the State Register on March 3, 2025, included the following: “Public Comment. The Department is publishing a second request for comments to seek information and comments from interested persons or groups regarding the draft ESST rules available via link below. In particular, the Department is interested in any comments regarding: ... (2) Whether any particular rule might require a local government to adopt or amend an ordinance or other regulation.”

⁶² Local governments with their own ESST laws as of the date this SONAR was published are the cities of Minneapolis, St. Paul, and Bloomington.

Costs of Complying for Small Business or City

Agency Determination of Cost

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business (i.e., less than 50 full-time employees) or small city. The Department has determined that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business or small city. The Department has not identified any proposed rules that would result in additional costs to small cities, and the Department has not received any comments to the contrary.

The Department received no comments from any small business raising cost concerns about the proposed rules. Nonetheless, the Department considered whether proposed rule 5200.1202, subp. 1, regarding location of hours worked, could potentially result in additional costs for small businesses. Specifically, the Department considered whether some small businesses with employees who predominantly work in Minnesota but also work in other states were providing ESST accrual for only hours worked in Minnesota prior to the anticipated adoption of these proposed rules. However, the proposed rule only addresses accrual of ESST, not ESST use. ESST accrual by itself does not result in costs to the employer.

ESST accrual is also limited by the 48-hour annual accrual limit and 80-hour total limit set forth in section 181.9446(b)(2). These statutory limits further minimize the extent of any increase in ESST accrual required under this proposed rule for employers with employees predominantly working in Minnesota who also work in other states. To the extent the proposed rule may result in a small increase in accrual for some employees, it could also result in a corresponding decrease in accrual for employees who do not predominantly work in Minnesota. Additionally, research studies have shown that the net benefit of laws like the ESST law related to increased productivity and improved public health offset any perceived costs to employers.⁶³

⁶³ See Chunyu, Liangrong, Paolo F. Volpin, and Xingchen Zhu. "Do Paid Sick Leave Mandates Increase Productivity?" LeBow College of Business, Drexel University, 23 Jan. 2023, lebow.drexel.edu/news/do-paid-sick-leave-mandates-increase-productivity (last visited August 14, 2025); Davison, H. Kristl, and Adam Scott Blackburn. "The Case for Offering Paid Leave: Benefits to the Employer, Employee, and Society." *Compensation & Benefits Review*, vol. 55, no. 1, Jan. 2023, pp. 3–18. PubMed Central, [pmc.ncbi.nlm.nih.gov/articles/PMC9535467/](https://pubmed.ncbi.nlm.nih.gov/articles/PMC9535467/) (last visited August 14, 2025); Maclean, Catherine, Stefan Pichler, and Nicolas R. Ziebarth. "Mandated Sick Pay: Coverage, Utilization, and Welfare Effects." *Washington Center for Equitable Growth*, 12 Jan. 2022, www.nber.org/papers/w26832 (last visited August 14, 2025); and *see also*, Asfaw, Abay, Roger Rosa, and Regina Pana-Cryan. "Potential economic benefits of paid sick leave in reducing absenteeism related to the spread of influenza-like illness." *Journal of occupational and environmental medicine* 59.9 (2017), at journals.lww.com/joem/abstract/2017/09000/potential_economic_benefits_of_paid_sick_leave_in.2.aspx (last visited August 14, 2024, subscription access required).

The Department also considered whether the administrative costs of complying with proposed rule 5200.1202, subd. 1, would create significant costs in the first year after the proposed subpart takes effect. After consideration, it is unlikely that the proposed subpart would significantly increase costs to a small business because the necessary data are already tracked for payroll purposes. For businesses operating in multiple states, primary work location must already be documented for tax and unemployment insurance reporting purposes. Similarly, while there may be some additional staff time spent making good-faith determinations pursuant to items B and C of this proposed subpart, the Department expects those costs to be nominal.

Therefore, the Department concluded that proposed rule 5200.1202, subp. 1, will not result in costs for any small business exceeding \$25,000 in the first year after the proposed rules take effect. No other proposed rules require analysis on this issue.

Authors, Witnesses, and Exhibits

Authors

The primary authors of this SONAR are:

- Byron Millea, Attorney, Department of Labor and Industry, Office of General Counsel
- Ryan P. Anderson, Attorney, Department of Labor and Industry, Office of General Counsel
- Peter Nikolai, Program Administrator, Labor Standards Division, Department of Labor & Industry
- Krystle Conley, Rulemaking Coordinator, Department of Labor and Industry, Office of General Counsel

Witnesses

In the event a hearing is necessary, the Department anticipates having the listed authors testify as witnesses in support of the need and reasonableness of the rules:

1. Peter Nikolai, Program Administrator, Labor Standards Division, Department of Labor & Industry.
2. Byron Millea, Attorney, Office of General Counsel, Department of Labor & Industry.

Exhibits

In support of the need for and reasonableness of the proposed rules, the Department anticipates that it will enter the following exhibits into the hearing record:

1. Exhibit 1, Public Engagement Conducted by the Labor Standards Division
2. Exhibit 2, Approval of the ESST Additional Notice Plan by Judge McKenzie

Conclusion

In this SONAR, the Department has established the need for and the reasonableness of each of the proposed additions to Minnesota Rules, chapter 5200. The Department has provided the necessary notice, and in this SONAR, documented its compliance with all applicable administrative rulemaking requirements of Minnesota Statutes and rules.

Based on the forgoing, the proposed rules are both needed and reasonable.



Commissioner Nicole Blissenbach
Department of Labor and Industry

October 10, 2025

Date

1.1 **Department of Labor and Industry**

1.2 **Proposed Permanent Rules Relating to Earned Sick and Safe Time**

1.3 **5200.1200 DEFINITIONS.**

1.4 Subpart 1. **Scope.** For the purposes of Minnesota Statutes, sections 177.50 and
1.5 181.9445 to 181.9448, and parts 5200.1201 to 5200.1209, the following terms have the
1.6 meanings given.

1.7 Subp. 2. **Accrual year.** "Accrual year" has the meaning given in Minnesota Statutes,
1.8 section 181.9445, subdivision 11.

1.9 Subp. 3. **Qualifying purpose.** "Qualifying purpose" means an eligible reason for an
1.10 employee to use earned sick and safe time as defined in Minnesota Statutes, section 181.9447,
1.11 subdivision 1.

1.12 **5200.1201 ACCRUAL YEAR.**

1.13 Subpart 1. **Accrual year.** If an employer does not designate and clearly communicate
1.14 the accrual year to each employee as required by Minnesota Statutes, section 181.9445,
1.15 subdivision 11, the accrual year is a calendar year.

1.16 Subp. 2. **Changes to accrual year.** An employer must provide notice of a change to
1.17 the start and end dates of an accrual year as part of the written notice of changes to
1.18 employment terms required under Minnesota Statutes, section 181.032, paragraph (f), prior
1.19 to the date the change takes effect. A change to the start and end dates of an accrual year
1.20 must not negatively impact an employee's ability to accrue earned sick and safe time in
1.21 accordance with Minnesota Statutes, section 181.9446.

1.22 **5200.1202 HOURS WORKED.**

1.23 Subpart 1. **Location of hours worked.** An employee accrues earned sick and safe
1.24 time in accordance with Minnesota Statutes, section 181.9446, paragraph (a), as follows:

2.1 A. if the employee will work more than 50 percent of their hours for the employer
2.2 in Minnesota in an accrual year, then all the employee's hours worked count toward their
2.3 accrual of earned sick and safe time regardless of location;

2.4 B. if the employee will work 50 percent or more of their hours for the employer
2.5 outside of Minnesota in an accrual year, then only the employee's hours worked in Minnesota
2.6 count toward their accrual of earned sick and safe time. The employer must determine in
2.7 good faith before the start of employment and the beginning of the accrual year whether
2.8 the employee will accrue earned sick and safe time under this item, unless the employer
2.9 will provide the employee with at least 48 hours of earned sick and safe time during the
2.10 accrual year;

2.11 C. if a significant change in circumstances will occur during an accrual year, such
2.12 as a change in work location or duties, the employer must determine in good faith whether
2.13 the employee will accrue earned sick and safe time under item A or B. Any significant
2.14 change in circumstance that results in the employee accruing earned sick and safe time
2.15 differently under this subpart is effective the date of the change in circumstances. The
2.16 employer must give the employee written notice of such a change prior to the date the change
2.17 takes effect under Minnesota Statutes, section 181.032, paragraph (f). Any accrued but
2.18 unused earned sick and safe time remains available for the employee to use during the
2.19 accrual year;

2.20 D. for the purposes of this subpart, "good faith" means the employer, at a minimum,
2.21 evaluated the employee's anticipated work schedule and locations of work in a manner that
2.22 is not knowingly false or in reckless disregard of the truth. The employer's obligation to
2.23 provide accrual of earned sick and safe time in accordance with items B and C is met if the
2.24 employer acts in good faith when anticipating the employee's location of hours worked for
2.25 an accrual year;

3.1 E. for the purposes of this subpart, an employee who is teleworking is considered
3.2 to be working in the state where they are physically located while performing telework;

3.3 F. notwithstanding this subpart, an employer is permitted to provide earned sick
3.4 and safe time in excess of the minimum amount required under Minnesota Statutes, section
3.5 181.9446; and

3.6 G. nothing in this subpart is to be construed as requiring compliance or imposing
3.7 obligations for work performed in a state or locality outside of Minnesota where such benefits
3.8 are expressly prohibited or preempted by law.

3.9 Subp. 2. **Determining hours worked.**

3.10 A. Parts 5200.0120 and 5200.0121 govern determinations of an employee's accrual
3.11 of earned sick and safe time under Minnesota Statutes, section 181.9446, paragraph (a).

3.12 B. Notwithstanding item A, for an employee exempt from overtime requirements
3.13 under United States Code, title 29, section 213(a)(1), who uses earned sick and safe time
3.14 for an absence of a full work day, more sick and safe time hours cannot be deducted than
3.15 the number of hours for which the employee is deemed to work for the purposes of accruing
3.16 earned sick and safe time each work day under Minnesota Statutes, section 181.9446,
3.17 paragraph (c).

3.18 Subp. 3. **Indeterminate shift.**

3.19 A. When an employee uses earned sick and safe time for an absence from a
3.20 scheduled shift of an indeterminate length, such as a shift defined by business needs rather
3.21 than a specific number of hours, the employer must deduct from the employee's available
3.22 earned sick and safe time using only one of the following options:

3.23 (1) the hours worked by the replacement worker, if any;

4.1 (2) the hours worked by the employee in the most recent similar shift of an
4.2 indeterminate length; or

4.3 (3) the greatest number of hours worked by a similarly situated employee, if
4.4 any, who worked the shift for which the employee used earned sick and safe time.

4.5 B. For an employee who uses earned sick and safe time after beginning a shift of
4.6 an indeterminate length, the employer must use the options in item A by deducting from
4.7 the employee's available earned sick and safe time the amount associated with the selected
4.8 option minus the hours already worked by the employee during the shift.

4.9 **5200.1203 TIME CREDITED AND INCREMENTS OF ACCRUAL.**

4.10 Subpart 1. **Crediting accrual.** For the purposes of Minnesota Statutes, section
4.11 181.9446, paragraph (a), earned sick and safe time must be credited to an employee for each
4.12 pay period based on all hours worked no later than the regular payday after the end of each
4.13 corresponding pay period. Earned sick and safe time is considered accrued when the employer
4.14 credits the time to the employee.

4.15 Subp. 2. **Increment of time accrued.** An employer is not required to credit employees
4.16 with less than hour-unit increments of earned sick and safe time accrued under Minnesota
4.17 Statutes, section 181.9446, paragraph (a).

4.18 Subp. 3. **Rehire.** An employee rehired by the same employer within 180 days of the
4.19 employee's separation from employment is entitled to a maximum reinstatement of 80 hours
4.20 of previously accrued but unused earned sick and safe time under Minnesota Statutes, section
4.21 181.9448, subdivision 2, unless the employer agrees to a higher amount or an applicable
4.22 statute, regulation, rule, ordinance, policy, contract, or other legal authority requires a greater
4.23 amount of accrued but unused time off to be reinstated.

5.1 **5200.1204 ACCRUAL AND ADVANCING METHODS.**

5.2 Subpart 1. **Advancing hours.** For the purposes of Minnesota Statutes, section
5.3 181.9448, subdivision 1, paragraph (j), when an employer advances earned sick and safe
5.4 time to an employee for the remainder of the accrual year:

5.5 A. the advanced amount of earned sick and safe time must be calculated at no less
5.6 than the rate required in Minnesota Statutes, section 181.9446, paragraph (a);

5.7 B. employers are not required to advance more than 48 hours of earned sick and
5.8 safe time, unless required by an applicable statute, regulation, rule, ordinance, policy,
5.9 contract, or other legal authority; and

5.10 C. if the advanced amount is less than the amount the employee would have
5.11 accrued based on the actual hours worked, the employer must provide additional earned
5.12 sick and safe time to make up the difference within 15 calendar days of the employee's
5.13 actual hours worked surpassing the number of hours the employer anticipated the employee
5.14 would work when it advanced earned sick and safe time.

5.15 Subp. 2. **Changing methods.** Any change to an employer's method of providing
5.16 earned sick and safe time to an employee under Minnesota Statutes, section 181.9446,
5.17 paragraph (a) or (b), must be communicated to the employee in writing and is not effective
5.18 until the first day of the next accrual year. An employer must provide notice of a change to
5.19 the accrual method as part of the written notice of changes to employment terms required
5.20 under Minnesota Statutes, section 181.032, paragraph (f). If an employer fails to provide
5.21 timely notice of a change to the accrual method as required by this subpart, the prior accrual
5.22 method remains in effect, unless the employee agrees otherwise. Changes to accrual under
5.23 part 5200.1202, subpart 1, item C, are not subject to this subpart.

5.24 Subp. 3. **No additional accrual necessary.** When an employer provides an employee
5.25 with earned sick and safe time for the accrual year under Minnesota Statutes, section

181.9446, paragraph (b), clause (2), the employer is not required to provide the employee with any additional accrual under Minnesota Statutes, section 181.9446, paragraph (a).

5200.1205 EMPLOYEE USE.

Subpart 1. No required use. It is an employee's right to use earned sick and safe time for a qualifying purpose. An employer must not require an employee to use earned sick and safe time.

Subp. 2. Unprotected leave. An employee's leave is not subject to the protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448, when the employee requests not to use earned sick and safe time for an absence from work.

5200.1206 INCENTIVES.

If a bonus, reward, or other incentive is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance and the employee has not met the goal due to use of earned sick and safe time, then the incentive may be denied, unless otherwise paid to employees on any other leave status.

5200.1207 REASONABLE DOCUMENTATION.

For uses of earned sick and safe time for which an employer may require reasonable documentation, an employee who does not provide reasonable documentation in accordance with Minnesota Statutes, section 181.9447, subdivision 3, is not subject to the protections provided to employees in Minnesota Statutes, sections 181.9445 to 181.9448. Any requirement for reasonable documentation must be clearly communicated to the employee and the employee must be given a reasonable amount of time to provide reasonable documentation.

5200.1208 MISUSE OF EARNED SICK AND SAFE TIME.

Subpart 1. Misuse. Misuse occurs when an employee uses earned sick and safe time for a purpose not covered by Minnesota Statutes, section 181.9447, subdivision 1. Misuse

7.1 is not subject to the protections provided to employees in Minnesota Statutes, sections
7.2 181.9445 to 181.9448.

7.3 Subp. 2. **Pattern or clear instance of suspected misuse.** Notwithstanding the timeline
7.4 provided in Minnesota Statutes, section 181.9447, subdivision 3, paragraph (a), an employer
7.5 is permitted to require reasonable documentation from an employee when there is a pattern
7.6 or clear instance of suspected misuse by the employee. A pattern or clear instance of
7.7 suspected misuse includes:

7.8 A. an employee repeatedly used earned sick and safe time on their scheduled work
7.9 day immediately before or after a scheduled day off, vacation, or holiday;

7.10 B. an employee repeatedly used increments of earned sick and safe time of less
7.11 than 30 minutes at the start or end of a scheduled shift;

7.12 C. an employee used earned sick and safe time on a day for which the employer
7.13 previously denied the employee's request to take other paid leave; or

7.14 D. documentation or other evidence that conflicts with the employee's claimed
7.15 use of earned sick and safe time.

7.16 An employer that requires reasonable documentation under this subpart must do so in
7.17 accordance with Minnesota Statutes, section 181.9447, subdivision 3, paragraphs (b) to (f).
7.18 An employer that requires reasonable documentation in accordance with this subpart is not
7.19 retaliating against an employee under Minnesota Statutes, section 181.9447, subdivision 6.

7.20 Subp. 3. **No restriction on use.** An employer must not deny an employee the use of
7.21 earned sick and safe time based on previous misuse of earned sick and safe time by the
7.22 employee or the employer's suspicion that the employee may misuse earned sick and safe
7.23 time. However, misuse of earned sick and safe time is not subject to protections provided
7.24 to employees in Minnesota Statutes, sections 181.9445 to 181.9448, and may be subject to
7.25 discipline by the employer.

8.1 **5200.1209 MORE GENEROUS SICK AND SAFE TIME POLICIES.**

8.2 Subpart 1. **Excess paid time off.** Excess paid time off and other paid leave made
8.3 available to an employee by an employer under Minnesota Statutes, section 181.9448,
8.4 subdivision 1, paragraph (a), is subject to the minimum standards and requirements provided
8.5 in Minnesota Statutes, sections 181.9445 to 181.9448, except for section 181.9446, only
8.6 when the leave is used for a qualifying purpose.

8.7 Subp. 2. **Salary continuation benefits.** For the purposes of Minnesota Statutes, section
8.8 181.9448, subdivision 1, paragraph (a), "other salary continuation benefits" includes
8.9 Minnesota Paid Leave under Minnesota Statutes, chapter 268B.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Relating to Earned Sick and Safe Time

AGENCY: Department of Labor and Industry

REVISOR ID: R-4877

MINNESOTA RULES: Chapter 5200

The attached rules are approved for
publication in the State Register

A handwritten signature in black ink, appearing to read "Sheree Speer".

Sheree Speer
Chief Deputy Revisor