



## EY Payroll NewsFlash Workforce Tax Services

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## Minnesota law requires paid sick and safe leave starting in 2024

- *Effective January 1, 2024, Minnesota employers with one or more employees are required to provide paid earned sick and safe leave (ESSL) to all employees who work for the employer within the state at least 80 hours during the year.*
- *Employees accrue one hour of ESSL for every 30 hours worked up to 48 hours per year.*
- *Employee earnings statements must show the total number of ESSL hours accrued and available for use, and the total number of ESSL hours used during the pay period.*
- *Employers must comply with Minnesota local ESSL laws that are more generous to employees.*

On May 24, 2023, Minnesota Governor Tim Waltz signed into law the Omnibus Jobs Act ([SF 3035](#)), which includes provisions that, effective January 1, 2024, require that employers with one or more employees provide their employees with ESSL of one hour for every 30 hours worked up to 48 hours per year.

Careful to leave little room for uncertainty about its application, Minnesota's ESSL law is one of the most comprehensive in the United States, addressing, among other things, the ESSL rights of rehired employees and employees transferred from a predecessor employer to a successor employer.

### **Covered employees**

Covered employees include full-time, part-time and temporary employees who perform services for at least 80 hours during a year for an employer within Minnesota. Independent contractors and individuals employed by an air carrier as a flight deck or cabin crew member meeting certain requirements are not covered employees.

### **Covered employers**

Covered employers are those with one or more employees and include individuals, corporations, partnerships, associations, business trusts, nonprofit organizations, groups of persons, the state of Minnesota, counties, towns, cities, school districts, and other governmental subdivisions.

A temporary employee provided by a staffing agency is the employee of the staffing agency absent a contractual agreement that provides otherwise.

### **ESSL accrual**

- *Minimum accrual.* Employees must accrue a minimum of one hour of ESSL for every 30 hours worked up to a maximum of 48 hours in a year. An employer may agree to allow employees to accrue more than 48 hours of ESSL in a year.

ESSL begins to accrue on January 1, 2024, or at the commencement of employment, whichever is later, and employees may use earned ESSL as it is accrued.

Employers may advance unearned ESSL to employees and employees may donate their leave to a leave bank for use by other employees.

- *Benefit year.* For the purposes of ESSL, “year” is defined as the regular and consecutive 12-month period determined by the employer. Employers are required to communicate to employees how the benefit year is determined (e.g., calendar year, fiscal year).
- *Carry over of ESSL.* Employers are required to allow employees to carry over up to 80 hours of earned but unused ESSL into the following year unless the employer agrees to a more generous carryover.

Alternatively, employers can front-load ESSL by either:

- (1) Providing 48 hours of ESSL at the beginning of the year if the employer pays out the accrued ESSL at the end of the previous year at the employee’s hourly rate.
- (2) Providing 80 hours of ESSL at the beginning of the year if the employer does not pay out ESSL at the end of the year.

- *Exempt employees.* For purposes of calculating the ESSL accrual, exempt employees are considered to work 40 hours per workweek unless their normal workweek for the exempt employee is less, in which case the lesser hours in the workweek are used.

### **Uses of ESSL**

The law specifies that an employee must be allowed to use ESSL when:

- An employee or family member suffers from a mental or physical illness, injury or other health condition; needs medical diagnosis, care or treatment of a mental or physical illness, injury or health condition; or needs preventive medical or health care.
- The employee is absent due to domestic abuse, sexual assault or stalking of the employee or employee's family member, provided the absence is to seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault or stalking; to obtain services from a victim services organization; to obtain psychological or other counseling; to seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault or stalking; or to seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault or stalking.
- The employee's place of business is closed due to weather or other public emergency or an employee needs to care for a family member whose school or place of care has been closed due to weather or other public emergency.
- The employee is not able to work or telework because the employee is prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness related to a public emergency; is seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee's employer has requested a test or diagnosis.
- It has been determined by the health authorities having jurisdiction or by a health care professional that the presence of the employee or family member of the employee in the community would jeopardize the health of others because of the exposure of the employee or family member of the employee to a communicable disease, without regard to whether the employee or family member has actually contracted the communicable disease.

### **Employee notice requirements**

If an employee's need for ESSL is foreseeable, an employer may not require more than seven days advance notice from the employee of the need for ESSL. If the employee's need for ESSL is not foreseeable, the employer may require advance notice of the need for ESSL as soon as is practicable.

In either case, the employer must have a written policy that provides reasonable procedures

for employees to provide advance notice for ESSL and provide a written copy of these procedures to employees. In the event this written policy is not given to employees, the employer cannot require advance notice.

### **Employer notice requirements**

At the commencement of employment, employers must provide to all employees, in English and the primary language of the employee, a notice concerning their entitlement to ESSL that includes:

- The amount of ESSL available and the accrual year for the employee
- The terms of ESSL use
- A copy of the written policy for employees to provide advance notice of the intention to use ESSL
- Information concerning employee remedies including that retaliation against employees who request or use ESSL is prohibited, and that each employee has the right to file a complaint or bring a civil action if ESSL is denied by the employer or the employee is retaliated against for requesting or using ESSL

Employers can meet this notice requirement by:

- Posting a copy of the notice at each location where employees perform work provided that the notice can be readily observed and easily reviewed by all employees performing work
- Providing a paper or electronic copy of the notice to employees
- Making a conspicuous posting to a web-based or app-based platform through which an employee performs work

If the employer provides an employee handbook to its employees, it must include the employees' right to ESSL and the employees' remedies should the employer not comply with the ESSL requirements.

The Minnesota Department of Labor Industry is instructed by law to prepare a uniform employee notice form meeting these requirements in the five languages most spoken in Minnesota.

Employers may make a written request to the Commissioner for the uniform notice. If the commissioner does not provide the copy of the uniform employee notice in response to a request, the employer is not subject to a penalty for failing to provide the required notice for periods following the date the request was made.

### **Earnings statements**

In addition to the information required on earnings statements under Minnesota state law (Minnesota Statutes Section 181.032(b)), employers must show the number of ESSL hours accrued and unused at the end of each pay period.

### **Termination, separation and transfer**

In general, employers are not required to pay unused ESSL when an employee terminates, resigns or retires. However, if an employee is transferred to a separate division, entity or location of the same employer, the employee is entitled to all ESSL accrued and unused at the prior division, entity or location and is entitled to use all earned ESSL.

Further, if an employee is rehired within 180 days of separation by the same employer, previously accrued and unused ESSL must be reinstated.

### **Successor employers**

When a different employer succeeds or takes the place of an existing employer, all employees of the predecessor employer who remain employed by the successor employer are entitled to all ESSL accrued but not used when employed by the predecessor employer and are entitled to use ESSL previously accrued but not used.

Employees who are terminated by the predecessor employer at the time of the transfer of the business and who are hired within 30 days by the successor employer following the transfer, are entitled to all ESSL accrued but not used when employed by the predecessor employer and are entitled to use all ESSL previously accrued but not used.

### **No preemption of local ESSL laws**

Minnesota's ESSL law does not preempt, limit or otherwise affect any other law, including Minnesota local ESSL laws, that provide for a greater ESSL accrual of paid leave or that extend other protections to employees.

### **Ernst & Young LLP insights**

Prior to the enactment of Minnesota's ESSL law, a number of Minnesota cities had already passed ESSL ordinances of their own, including [Bloomington](#) (see *Tax Alert 2023-0968*), [Duluth](#), [Minneapolis](#) and [St. Paul](#).

Because Minnesota's state ESSL law does not preempt Minnesota local laws with provisions more generous to employees, employers will now need to carefully compare the requirements of the new state ESSL law with all local ESSL laws where employees provide services to determine which provisions (state or local) will supersede. For instance, Minnesota state law applies to employers with one or more employees while, St. Paul's paid ESSL requirement applies to businesses with 24 or more employees.

Businesses should consider working with an employment law advisor to confirm proper compliance with the ESSL requirements in all Minnesota jurisdictions.

**Contact us for more information**

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