



# Board of County Commissioners Agenda Request

**5B**  
Agenda Item #

**Requested Meeting Date:** January 2, 2024

**Title of Item:** Approve ESST Policy

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| <input type="checkbox"/> REGULAR AGENDA<br><input checked="" type="checkbox"/> CONSENT AGENDA<br><input type="checkbox"/> INFORMATION ONLY  | <b>Action Requested:</b><br><input checked="" type="checkbox"/> Approve/Deny Motion<br><input type="checkbox"/> Adopt Resolution (attach draft) | <input type="checkbox"/> Direction Requested<br><input type="checkbox"/> Discussion Item<br><input type="checkbox"/> Hold Public Hearing*<br><i>*provide copy of hearing notice that was published</i> |
| <b>Submitted by:</b><br>Bobbie Danielson, Human Resources Director  | <b>Department:</b><br>Human Resources   |  |
| <b>Presenter (Name and Title):</b>  |   | <b>Estimated Time Needed:</b>  |
| <b>Summary of Issue:</b><br><p>The Board adopted a draft ESST (Earned Sick and Safe Time) policy in early December. It has reviewed by Department Heads and finalized. A copy is attached. The department heads will continue to have discussions related to this policy and monitor ongoing ESST recommendations as this new law is implemented across the state. If any future changes are recommended, they will be brought to the Board for review and consideration.</p> |   |  |
| <b>Alternatives, Options, Effects on Others/Comments:</b>   |   |  |
| <b>Recommended Action/Motion:</b><br>Adopt final ESST policy. This ESST policy will be effective January 1, 2024.   |   |  |
| <b>Financial Impact:</b><br><i>Is there a cost associated with this request?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No<br><i>What is the total cost, with tax and shipping? \$</i><br><i>Is this budgeted?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No <i>Please Explain:</i>   |   |  |

**Aitkin County Personnel Policy, Supplemental Policy  
Earned Sick and Safe Time (ESST) Policy  
Effective January 1, 2024**

**Section 1. Introduction and Accrual**

Effective January 1, 2024, the employer will provide all employees (full-time, part-time, temporary, seasonal, substitute, and intermittent) who work 80 or more hours in a calendar year with up to 48 hours of paid sick and safe leave for care of themselves, their family members, or another designee as described in Section 4 below.

For purposes of this ESST policy and calculating 80 or more hours of “work” in a calendar year, all PTO, overtime hours worked, and holiday hours shall count as time “worked”. Comp time, personal leave, extended sick leave hours, workers’ compensation, PTO cash out time, and unpaid leaves of absence do not count as time “worked” for purposes of calculating 80 or more hours of “work” in a calendar year for purposes of this ESST policy.

A “year” is defined as a calendar year.

Eligible employees begin accruing ESST immediately upon their hire.

This ESST Policy does not apply to volunteers, independent contractors, or elected officials.

Under this new ESST law, eligible employees will accrue one hour of earned sick and safe time for every 30 hours worked, up to a maximum of 48 hours of earned sick and safe time in a calendar year.

Earned sick and safe time may be used in the smallest increment of time tracked by the employer's payroll system which is currently .001 hours, unless indicated otherwise by departmental recordkeeping systems in the Sheriff’s office and/or Highway department.

Note: The expanded benefits under this ESST policy, such as less restrictive notice requirements, expanded definition of “family member”, and any other provision that is less restrictive than other county and departmental policies only applies to ESST usage (i.e. the first 48 hours of accrued leave usage per calendar year, or up to 80 hours if any carryover applies).

**Section 2. Designation / Advisory / ESST Carryover**

**A. Advisory for Full-time and Part-time Employees who work 80 or more hours in a Calendar Year**

ESST is not a new bank of time. The employer already provides PTO and Personal Leave to full-time and part-time employees under the personnel policy or collective bargaining agreement(s). The first 48 hours of *PTO, Extended Sick Leave, and/or Personal Leave (hereinafter referred to as accrued time)* used per calendar year will be designated as ESST (or up to 80 hours if any carryover applies). If an employee chooses to use all of their available accrued time for reasons other than those outlined in this policy as ESST eligible hours, they will not be provided with additional ESST hours. Employees will **not** be provided with additional ESST hours once their available ESST hours have been exhausted.

Employees may use the first 48 hours of accrued time for the same purposes and under the same conditions as earned sick and safe time provides (or up to 80 hours if any carryover applies). Only the first 48 hours of accrued time qualify as ESST (or up to 80 hours if any carryover applies).

Employees may carryover any unused ESST from [calendar] year to year, up to a maximum of 80 hours ESST.

For purposes of accruing ESST, FLSA Exempt (salaried) employees are deemed to work 40 hours in each workweek, unless the employee's normal workweek is less than 40 hours, in which case they will accrue ESST based on their normal workweek.

**B. Advisory for Temporary, Seasonal, Substitute, and Intermittent Employees who work 80 or more hours in a Calendar Year**

The employer shall provide one hour of earned sick and safe time for every 30 hours worked, up to a maximum of 48 hours of earned sick and safe time in a calendar year. Employees will not be provided with additional ESST hours once their available ESST hours have been exhausted.

Employees may carryover any unused ESST from [calendar] year to year, up to a maximum of 80 hours ESST.

**C. During years when carryover of unused ESST applies,** ESST accruals shall not exceed 80 hours at any given time.

**Section 3. ESST Eligible Use**

Eligible employees may use accrued earned sick and safe time for:

**(A)** an employee's:**(i)** mental or physical illness, injury, or other health condition;**(ii)** need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or**(iii)** need for preventive medical or health care;

**(B)** care of a family member as defined in Section 4 below:**(i)** with a mental or physical illness, injury, or other health condition;**(ii)** who needs medical diagnosis, care, or treatment of a mental or physical illness, injury, or other health condition; or**(iii)** who needs preventive medical or health care;

**(C)** absence due to domestic abuse, sexual assault, or stalking of the employee or employee's family member, provided the absence is to:**(i)** seek medical attention related to physical or psychological injury or disability caused by domestic abuse, sexual assault, or stalking;**(ii)** obtain services from a victim services organization;**(iii)** obtain psychological or other counseling;**(iv)** seek relocation or take steps to secure an existing home due to domestic abuse, sexual assault, or stalking; or**(v)** seek legal advice or take legal action, including preparing for or participating in any civil or criminal legal proceeding related to or resulting from domestic abuse, sexual assault, or stalking;

**(D)** closure of the employee's place of business due to weather or other public emergency or an employee's need to care for a family member whose school or place of care has been closed due to weather or other public emergency;

**(E)** the employee's inability to work or telework because the employee is:**(i)** prohibited from working by the employer due to health concerns related to the potential transmission of a communicable illness

related to a public emergency; or(ii) seeking or awaiting the results of a diagnostic test for, or a medical diagnosis of, a communicable disease related to a public emergency and such employee has been exposed to a communicable disease or the employee's employer has requested a test or diagnosis; and

(F) when 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, whether or not the employee or family member has actually contracted the communicable disease. For the purposes of this paragraph, a public emergency shall include a declared emergency as defined in MN Statutes §12.03 or a declared local emergency under MN Statutes §12.29.

An employee may use earned sick and safe time for all or part of a shift, depending on their need.

The employer shall not require, as a condition of an employee using ESST, that the employee seek or find a replacement worker to cover the hours the employee uses as earned sick and safe time.

#### **Section 4. Definition of "Family Member"**

For the purpose of this ESST Policy, "Family Member" means:

- (A) an employee's:(i) child, foster child, adult child, legal ward, child for whom the employee is legal guardian, or child to whom the employee stands or stood in loco parentis;(ii) spouse or registered domestic partner;(iii) sibling, stepsibling, or foster sibling;(iv) biological, adoptive, or foster parent, stepparent, or a person who stood in loco parentis when the employee was a minor child;(v) grandchild, foster grandchild, or step-grandchild;(vi) grandparent or step-grandparent;(vii) a child of a sibling of the employee;(viii) a sibling of the parents of the employee; or(ix) a child-in-law or sibling-in-law;
- (B) any of the family members listed in clause (1) of a spouse or registered domestic partner;
- (C) any other individual related by blood or whose close association with the employee is the equivalent of a family relationship; and
- (D) up to one individual annually designated by the employee. *It is the employee's responsibility to notify HR in writing by January 10th of each year who this one individual shall be designated as. The employee's initial designation will carry over from year to year unless amended in writing by January 10th of each year. Send written designation to: [HR@co.aitkin.mn.us](mailto:HR@co.aitkin.mn.us) or Aitkin County HR, Government Center, 307 2<sup>nd</sup> St NW, Room 312, Aitkin, MN 56431.*

Note: This expanded definition of "family member" only applies to ESST usage (i.e. the first 48 hours of accrued leave usage per calendar year, or up to 80 hours if any carryover applies).

#### **Section 5. Other Relevant Definitions**

"Domestic abuse" has the meaning given in section 51801.

"Health care professional" means any person licensed, certified, or otherwise authorized under federal or state law to provide medical or emergency services, including doctors, physician assistants, nurses, advanced practice registered nurses, mental health professionals, and emergency room personnel.

"Sexual assault" means an act that constitutes a violation under sections 609.342 to 609.3453 or 609.352.

"Stalking" has the meaning given in section 609.749.

**Section 6. Pay / Insurance / Seniority / FMLA / No Use of ESST on Scheduled Days Off**

For purposes of this ESST Policy, Earned Sick and Safe Time will be paid at the wage the employee would have earned had they worked that shift. This includes night shift differential pay when applicable.

PTO hours "cashed out" does not counted towards the 48 hours of ESST use (or up to 80 hours if any carryover applies).

The employer will maintain coverage under any group insurance policy for the employee and any dependents as if the employee was not using ESST, provided, however, that the employee must continue to pay any employee share of the cost of such benefits.

In accordance with the ESST law, an employee returning from ESST leave is entitled to retain their seniority status as if there had been no interruption in service, unless stated otherwise in the applicable collective bargaining agreement.

ESST time runs concurrent with FMLA, as applicable.

Earned Sick and Safe Time cannot be used on an employee's scheduled day off.

**Section 7. Notice to Employer**

If the need for ESST use is foreseeable, employees must provide their Department Head 7 days advance notice of the intention to use earned sick and safe time. If an employee does not provide notice for foreseeable leave, earned sick and safe time may be denied.

If the need is unforeseeable, employees must provide their Department Head notice of the need for earned sick and safe time as soon as practicable.

**Section 8. Documentation**

**(A)** When an employee uses earned sick and safe time for more than three consecutive days, the HR Director or designee may require reasonable documentation that the earned sick and safe time is covered by this policy.

**(B)** For ESST time related to health conditions, reasonable documentation may include a signed statement by a health care professional indicating the need for use of earned sick and safe time. However, if the employee or employee's family member did not receive services from a health care professional, or if documentation cannot be obtained from a health care professional in a reasonable time or without added expense, then reasonable documentation for the purposes of this paragraph may include a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose covered by this policy, sufficient to document the applicable use and section.

**(C)** For ESST time related to domestic abuse, sexual assault, or stalking, the employer will accept a court record or documentation signed by a volunteer or employee of a victims services organization, an attorney, a police officer, or an antiviolence counselor as reasonable documentation.

(D) For ESST time related to care for a family member, the employer will accept as reasonable documentation a written statement from the employee indicating that the employee is using or used earned sick and safe time for a qualifying purpose covered by this policy, sufficient to document the applicable use and section, as reasonable documentation.

(E) An employee is not required to disclose specific details relating to domestic abuse, sexual assault, or stalking or the details of an employee's or an employee's family member's medical condition as related to an employee's request to use earned sick and safe time.

**Section 9. Transfer, Termination, and Rehire**

Employees who are transferred to a different job classification for the same employer will retain their accrued and unused earned sick and safe time on account.

Accrued and unused ESST time is not paid out upon the employee's resignation, retirement, layoff, or termination.

Employees who separate employment and are rehired within 180 days will retain their previously accrued and unused earned sick and safe time on account.

**Section 10. Retaliation Prohibited**

The employer shall not discharge, discipline, penalize, interfere with, threaten, restrain, coerce, or otherwise retaliate or discriminate against an employee who uses earned sick and safe time.

**Section 11. Disclaimer**

In cases where departmental policies, procedures, or practices are more restrictive than this ESST policy, the ESST policy will prevail. As an example, for the first 48 hours of paid leave, no notice is required under ESST for unforeseeable leave (or up to 80 hours if any carryover applies).

Details and interpretations surrounding this new ESST law are still forthcoming from the Department of Labor. This policy is subject to change at the employer's discretion.

**Section 12. Questions**

Questions or concerns regarding this ESST Policy may be directed to the Aitkin County Human Resources Department. [HR@co.aitkin.mn.us](mailto:HR@co.aitkin.mn.us) or 218-927-7306



## Earned sick and safe time employee notice

Employees in Minnesota are entitled to Earned Sick and Safe Time (ESST), a form of paid leave. Employees must accrue at least one hour of earned sick and safe time for every 30 hours they work, up to at least 48 hours in a year. A year for purposes of the employee's earned sick and safe time accrual is the calendar year.

The earned sick and safe time hours the employee has available, as well as those that have been used in the most recent pay period, can be determined by looking at the employee's earnings statement that they receive at the end of each pay period. For Full-time and Part-time Employees who work 80 or more hours in a Calendar Year, the first 48 hours of YTD Accrued and YTD Taken [PTO, Extended Sick Leave, and/or Personal Leave combined] is designated as ESST (or up to 80 hours if any carryover applies). For Temporary, Seasonal, Substitute, and Intermittent Employees who work 80 or more hours in a Calendar Year [employees who do not accrue PTO, Extended Sick Leave, and/or Personal Leave], the ESST accruals will be titled as such and also shown in the YTD Accrued and YTD Taken columns. Earned sick and safe time must be paid at the same hourly rate employees earn from employment. Employees are not required to seek or find a replacement for their shift to use earned sick and safe time. They may use earned sick and safe time for all or part of a shift, depending on their need.

Earned sick and safe time can be used for:

- an employee's mental or physical illness, treatment or preventive care;
- the mental or physical illness, treatment or preventive care of an employee's family member;
- absence due to domestic abuse, sexual assault or stalking of an employee or their family member;
- closure of an employee's workplace due to weather or public emergency or closure of their family member's school or care facility due to weather or public emergency; and
- when determined by a health authority or health care professional that an employee or their family member is at risk of infecting others with a communicable disease.

## Notifying employer, documentation

An employer can require their employees to provide up to seven days of advance notice when possible (for example, when an employee has a medical appointment scheduled in advance) before using sick and safe time. An employer can also require their employees to provide certain documentation regarding the reason for their use of earned sick and safe time if they use it for more than three consecutive days.

If an employee plans to use earned sick and safe time for an appointment, preventive care or another permissible reason they know of in advance, inform their Department Head by phone, email or other communication as far in advance as possible, but at least 7 days in advance. In situations where an employee cannot provide advance notice, the employee should contact their Department Head by phone, email or other communication as soon as they know they will be unable to work.

## Retaliation, right to file complaint

It is against the law for an employer to retaliate, or to take negative action, against an employee for using or requesting earned sick and safe time or otherwise exercising their earned sick and safe time rights under the law. If an employee believes they have been retaliated against or improperly denied earned sick and safe time, they can file a complaint with the Minnesota Department of Labor and Industry. They can also file a civil action in court for earned sick and safe time violations.

## For more information

Contact the Minnesota Department of Labor and Industry's Labor Standards Division at 651-284-5075 or [dli.laborstandards@state.mn.us](mailto:dli.laborstandards@state.mn.us) or visit the department's earned sick and safe time webpage at [dli.mn.gov/sick-leave](http://dli.mn.gov/sick-leave).