

Fall in Love with Compliance: Navigating Minnesota's Evolving Employment Legal Landscape

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Agenda

- Minnesota's Earned Sick and Safe Time
- Minnesota Paid Family Leave
- Key 2023 Employment Law Updates
- Key 2024/25 Employment Law Updates
- Q & A

Statewide Earned Sick and Safe (“ESST”) Leave

- As of January 1, 2024, employers must provide paid sick and safe time to Minnesota employees.
 - Covered employers: Any individual, business, or organization with one or more employee.
 - Covered employees: All employees, including part-time and temporary, who perform work in Minnesota for at least 80 hours per year.
 - Use of sick and safe time: May use time for the employee’s or the employee’s family members:
 - mental or physical illness, injury, or other health condition;
 - need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or
 - need for preventive medical or health care.
 - In addition, earned sick and safe time may be used for:
 - An absence due to domestic abuse, sexual assault, or stalking of the employee or the employee’s family member;
 - Making funeral arrangements, attending a funeral or memorial service, or addressing financial or legal matters arising out of a family member’s death; and
 - If the employee’s place of business has been closed or if employee needs to care for family member whose school or place of care is closed due to public emergency (including weather).

Statewide Earned Sick and Safe (“ESST”) Leave

- Accrual, Carryover, and Frontloading
 - Employees earn 1 hour of paid sick and safe leave for every 30 hours worked up to a permissible cap of 48 hours per year.
 - Employees must be allowed to carryover accrued but unused paid sick and safe time from year to year but may cap total accrual and usage at 80 hours per year.
 - Employers may avoid accrual and carryover requirements by frontloading paid sick and safe time each year as follows:
 - 48 hours, if the employer pays employees for accrued but unused sick and safe time at the end of a year at their same hourly rate; or
 - 80 hours, if the employer does not pay employees for accrued but unused sick and safe time at the end of a year.
 - Employees start accruing paid sick and safe time immediately and can use time once accrued.
 - No payout of unused but accrued time at termination, however, if re-hired within 180 days, time must be reinstated.

Statewide Earned Sick and Safe (“ESST”) Leave

- Notice & Recordkeeping
 - Employee notice
 - Can require at least 7 days’ notice if need is foreseeable
 - Can require “reasonable documentation” if out of work 3 or more consecutive days
 - Cannot require doctor’s note for absences
 - Employer notice
 - Must provide notice of rights in handbooks, if have one, or through some other written means
 - If your current PTO policies meet the requirements of the legislation (i.e., applies to all employees, allows leave for the covered reasons, etc.) no additional policy is required**
 - Information about accrued time must be included on statements to employees
- REMINDER: MN LAW DOES NOT PREEMPT OTHER LOCAL PAID SICK AND SAFE LEAVE LAWS

Statewide Earned Sick and Safe (“ESST”) Leave

- Notice & Recordkeeping
 - Employers must provide notice to all employees that includes at least the following information:
 - employees are entitled to ESST;
 - the amount of ESST they will accrue;
 - the accrual year for the employee (as set by the employer);
 - the terms regarding when employees may use ESST;
 - a copy of any existing written policy regarding employees providing notice to use ESST;
 - an explanation that retaliation for requesting or using ESST is prohibited; and
 - an explanation that employees have a right to file a complaint or to bring a civil action if ESST is denied or if employees are retaliated against for requesting or using ESST.
 - This notice needs to be provided to employees in English and the primary language of the employee.

Statewide Earned Sick and Safe (“ESST”) Leave

- 2024 legislative session provided new updates to ESST law:
 - Additional of leave for funeral-related reasons
 - Employers are not obligated to grant leave in increments smaller than 15 minutes for non-exempt employees and 4 hours for exempt employees (not including intermittent FMLA)
 - No longer obligated to include available ESST hours and total number of ESST hours used that pay period on pay stubs, any “reasonable system” works
 - Can only request reasonable documentation if leave is for three consecutive workdays
 - If you use your PTO policy to comply with ESST requirements and that PTO policy is more generous than what is required under the law, the additional PTO must meet the same requirements as the ESST hours
 - Remember! You cannot require an employee to use their ESST so you cannot require they use PTO concurrently with unpaid leaves

Statewide Earned Sick and Safe (“ESST”) Leave

- How can employers protect themselves?
 - Review time of requests more closely. You need enough details to know if the leave applies to ESST. You can deny (and SHOULD deny) any requests without comments as to what the leave is for.
 - Ask for documentation for three consecutive workday absences.
 - Call an employee if they no call, no show—get ahead of a potential ESST/FMLA issue when they try to return.
 - Discipline or administer attendance points for absences not fully covered by ESST leave.
 - Consider separating out ESST and paid vacation.
 - Apply your policies and procedures in a uniform manner.
 - Pay attention to what hourly rate is required.

Paid Family and Medical Leave

- Employees may begin to take PFML as of January 1, 2026—the same day employers and employees will begin paying into the fund via payroll tax.
 - Covered employers: All employers, regardless of size.
 - Eligible employees: All Minnesota employees who have earned at least 5.3% of the state average annual wage over a prior 12-month period (about \$3,500).
 - Use of PFML: Employees may take up to:
 - 12 weeks of leave for one's own serious health condition, and
 - 12 weeks of leave for bonding, safety leave, and family care leave up to 20 weeks annually.
 - Leave may be taken intermittently, but employers may limit intermittent leave to 480 hours in any 12-month period. Leave can be granted in minimum increments of one calendar day.

Paid Family and Medical Leave

- Employers must pay quarterly premiums to the insurance benefit fund on the taxable wages paid to each employee. As of January 1, 2026, the employer premium rates shall be:
 - 0.88% for an employer participating in both family and medical benefit programs
 - 0.44% for an employer participating in only medical benefit programs with an approved private plan for the family benefit program
 - 0.44% for an employer participating in only the family benefit program with an approved private plan for the medical benefit program
- Employers will be required to cover at least half of the annual premiums and employees will be required to cover the remaining amount through a payroll deduction.
- Employee pay benefit amount will be calculated based on the employee's wages as compared to the state's average weekly wage.
 - Employers can supplement PFML to help employees reach full wage replacement
 - No PFML benefits when using vacation, sick, PTO, or severance

Paid Family and Medical Leave

- Employers can opt out of the program by establishing a private plan through private insurance if meets the law's requirements.
- The law prohibits retaliation against employees for requesting or obtaining benefits under the new program.
- Upon return from leave, an employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

Paid Family and Medical Leave

- Important definitions:
 - Serious health condition is a physical or mental illness, injury, impairment, condition, or substance use disorder that involves inpatient or outpatient care or continuing treatment or supervision by a health care provider involving various types of incapacity for a specified period of time as defined in the new law.
 - Family member includes a spouse or domestic partner; sibling; grandchild; grandparent or spouse's grandparent; son- or daughter-in-law; child (including biological, adopted, or foster child, stepchild, or child to whom the applicant stands in loco parentis, is a legal guardian, or is a de facto parent); parent or legal guardian of the applicant (including biological, adoptive, de factor, foster, or step-parent, or legal guardian or individual who stood in loco parentis to the applicant when the applicant was a child); and an individual who has a relationship with the applicant that creates an expectation and reliance that the applicant care for the individual, whether or not the applicant and the individual reside together.

Minnesota Paid Family & Medical Leave

- New DEED Developments 2024
 - MN DEED has published (semi) helpful guidance as to how leave requests will be treated
 - First wage report submissions were due October 31, 2024
 - Notice of Rights posters must go up no later than November 1, 2025
- Legislation broadened coverage under PFML
 - Definitions more inclusive
 - Self-employed individuals and independent contractors may apply for coverage
 - If make changes to plan, employee eligible for benefits under plan that was in control when leave originally approved
 - However—employee cannot earn more than 100% wages through combination of benefit programs
 - If employment ends while on a leave, employee must still receive coverage for 20 weeks or until they secure new employment

Quick Refresher: Significant 2023 Changes

- Nursing Mother Protections
 - As of July 1, 2023 all employers must provide a clean, private, and secure room or other location close to the employee's work area to express milk.
 - The bill removed the 12-month time limitation so that employees may express milk regardless of when their child was born.
 - Although the current law allows employers to deny breaks if doing so would unduly disrupt business operations, the new law removes this exception. Employers may no longer deny reasonable break time for any reason.
 - Breaks must be paid, however, can still require that employee's use provided unpaid breaks to express milk.

Quick Refresher: Significant 2023 Changes

- Pregnancy Accommodations
 - As of July 1, 2023, all employers must provide the following modifications as a reasonable accommodation to an employee with health conditions related to pregnancy and child birth:
 - More frequent or longer restroom, food, and water breaks;
 - Temporary leaves of absence;
 - Modification in work schedule or job assignments;
 - Temporary transfer to a less strenuous or hazardous position;
 - More frequent or longer break periods; and
 - Seating.
 - The new legislation also states that an employee who returns from a leave of absence is entitled to return to the employee's former position or in a position of comparable duties, number of hours, and pay.
 - Must provide written notice at time of hire and when employees inquire about leave and in any employee handbook.

Quick Refresher: Significant 2023 Changes

- Unpaid Parental Leave
 - As of July 1, 2023, all employers must provide up to 12 weeks of unpaid leave to parents in conjunction with:
 - the birth or adoption of a child, or
 - to pregnant employees for prenatal care, or
 - incapacity due to pregnancy, childbirth, or related health conditions.
 - Previous law only applied to employers with 21 or more employees in Minnesota and includes minimum length of service and hours requirements. The amended law provides unpaid leave to all Minnesota employees as soon as they begin employment.
 - Notice Requirements
 - Must inform employees of rights at time of hire, when an employee makes an inquiry about or requests parental leave, and through any employee handbook.
 - Information must be in English and employee's primary language as identified by the employee.

Quick Refresher: Significant 2023 Changes

- Pay History Inquiry Ban
 - As of January 1, 2024, employers banned from inquiring about pay history.
 - The new law prohibits employers, employment agencies, and labor organizations from inquiring into, considering, or requiring disclosure from any source of the pay history of a job applicant for the purpose of determining wages, salary, earnings, benefits, or other compensation for that applicant.
 - The law does not prevent job applicants from voluntarily disclosing their pay history, so long as the applicants are not asked, encouraged or prompted to disclose their pay history.
 - However, even if voluntarily provided, employers may consider or act upon that pay history information only to support a wage or salary higher than initially offered by the employer.

Quick Refresher: Significant 2023 Changes

- Non-Compete Agreements
 - Movement at the State Level
 - California, North Dakota, Oklahoma, and Washington D.C. ban agreements outright with limited exceptions.
 - Several states including Colorado and Illinois prohibit non-compete agreements unless the employee earns above a certain salary threshold.
 - As of **July 1, 2023**, non-compete agreements are prohibited for Minnesota-based employees.
 - Important to note the law is not retroactive.
 - Prohibition applies to employees AND independent contractors.
 - Only limited exceptions in the sale of a business context.

Job Posting Changes

- Effective January 1, 2025, employers with 30+ employees in Minnesota will be subject to new pay transparency requirements
- All job postings must include:
 - Salary range or fixed pay rate
 - Description of all benefits (health & retirement benefits, etc.)
- Open ended job postings insufficient
 - “Pay starting at....”
 - “Competitive benefits...”
- All solicitations covered regardless of where posted (think LinkedIn, Indeed, etc.)
- Applies to MN-based positions and remote work if MN-based employee could apply

Other Important Changes

- MN Parental Leave
 - 12 weeks of leave under the MN Parental Leave Act may not be reduced by any period of paid or unpaid leave for prenatal care medical appointments
 - Employers must continue providing insurance benefits to employees and their dependents while on parental leave (bringing state law in line with FMLA)
- Independent Contractor Classification
 - New law increases penalties for misclassifying employees as independent contractors
 - Renewed focus on construction industry
 - Now using 14-point test to show proper classification—must meet all 14 points
- Ban on Non-Solicitation Agreements with Service Providers
 - Prohibition on service providers (contracting agencies) from prohibiting customers/clients from soliciting or hiring the service provider's employees or contractors
 - Unclear whether retroactive or if only applies to agreements entered into after July 1, 2024

Other Important Changes

- Changes under Minnesota Human Rights Act
 - Expanded definitions
 - “Disability” definition now includes impairment that is episodic or in remission similar to definition under the ADA
 - “Familial status” definition now includes caretakers
 - Charging parties now have 90 days to commence litigation following receipt from the MDHR (up from 45 days)
 - New penalties if employer found to be in violation of MHRA
 - Mandatory civil penalty 3X the actual damages sustained
 - No longer a cap on punitive damages (previously \$25,000)
 - MDHR must now make its determination on a charge within 1 year of the filing
 - This period can be tolled for meaningful settlement negotiations

Other Important Changes

- State Minimum Wage
 - As of January 1, 2025, no more differential based on employer size
 - 2024: different minimum wage for large (\$10.85/hr) and small (\$8.85/hr) employers
 - 2025: all employers regardless of size will be subject to the statewide minimum wage of \$11.13/hr, unless the employer is in Minneapolis or St. Paul where city ordinances have a higher minimum wage
 - No more youth minimum wage
 - 2024: lower minimum wage for those under age 18 (\$8.85/hr)
 - 2025: only those under 20 years of age in their first 90 days of work are subject to a lower minimum wage of \$9.08/hr

Questions?

