



MN Earned Safe & Sick Time (ESST) Calculations

As of 12/15/2023

These models have been sourced from MTA member companies, with assistance from CliftonLarsonAllen.

Disclaimer: *These models are for illustrative purposes only. Please consult a qualified attorney and/or accountant to address your specific situation.*

STEP ONE: REVIEW EXISTING POLICIES AND POSITIONS

Do you have a current policy in place that will comply with the law?

- Example: Do you have another paid leave policy that employees can take at any time for any reason?
- There is no statutory language or regulatory guidance that addresses what is required if a current policy meets the requirements

What systems do you have or need to track and meet the reporting requirements?

- Timekeeping
 - Certain ELD systems do have the capability to break down time driven by minutes/hours and by state. Confer with your provider to determine if your system has this functionality.
 - Work with CPA and accounting team to develop potential manual system to transfer captured data into payroll system.
- Reporting leave time on pay statements ([Minnesota Earnings Statement Laws](#))
 - At this time, the Minnesota Department of Labor and Industry has not provided guidance for unlimited PTO policies. With that said, it remains a universal requirement to be on earnings statements.
 - MTA recommends consulting a qualified employment attorney for personalized legal guidance that addresses your situation. They can offer detailed insights and advice based on a comprehensive understanding of your circumstances and the relevant laws.

Evaluate impacts of broader modification of company paid leave policies

- Determine cost/benefit of creating a single paid time off benefit “bucket”
- Address potential differentials for employees working in Minnesota vs. those not working in Minnesota

STEP TWO: DECIDE ON FRONT-LOADING OR CARRYOVER

Option 1: Accrual and carryover

- Employees begin accruing ESST from their first day of employment
- ESST accrue at a rate of at least one hour for every 30 hours worked
- Employees are permitted to accrue a minimum of up to 48 hours of ESST in a year (more if the employer agrees to a higher amount)

- Employees carry over unused ESST into the next year. However, at no time can an employee's accrued ESST exceed 80 hours (unless an employer agrees to a higher amount)

Option 2: Front Loading with payout and no carryover

- A minimum of 48 hours of ESST is provided to an employee and made available for immediate use at the start of each year
- Unused ESST hours are paid out at the end of the accrual year at the employee's hourly rate

Option 3: Front Loading with no payout and no carryover

- A minimum of 80 hours of ESST is provided to an employee and made available for immediate use at the start of each year
- The ESST hours the employee did not use are not paid out at the end of the accrual year

Examples on How to Accrue Hours (Option 1)

Example 1: Acme Trucking Company (Acme) pays their drivers on a per-mile basis. Acme's ELD devices do not have a way to track hours for the drivers.

- Acme has a driver that drives 10 days locally in MN in the first pay period cycle of the year.
- Acme could utilize 8 hours per workday for the ESST calculation for their drivers
- Therefore, Acme would use 80 hours of work for the driver during the pay period and would accrue 2.67 ESST hours for the driver
- $80 \text{ Hours} / 30 \text{ Hours} = 2.67 \text{ Hours Accrued}$

Example 2: Same facts as example 1 above except the driver is an over-the-road driver that has spent time both in and outside of Minnesota.

- Acme is only required to accrue for ESST hours for the time the driver spent in Minnesota.
- Since Acme's ELD device and other systems do not have a way to track hours for the driver, Acme could utilize the mileage for the driver
- Here, the driver drove 2,000 miles during the 10-day pay period where 400 was in Minnesota.
- Therefore, Acme could estimate that the driver spent 20% of their time in Minnesota, and thus 16 hours would go towards the ESST calculation, and they would accrue 0.53 hours for the driver
- $400 \text{ Miles in MN} / 2,000 \text{ Miles total} = 20\%$
 $80 \text{ Hours} \times 20\% = 16 \text{ Hours}$
 $16 \text{ Hours} / 30 \text{ Hours} = 0.53 \text{ Hours Accrued}$

Example 3: Same facts as example 2 above except the driver is paid based on a percentage of the load.

- Acme could follow the same logic to estimate the number of hours accrued.

Examples for How to Determine an Hourly Rate to Pay Out ESST

Note: Employers should ensure that employees receive ESST at a rate equivalent to the hourly rate they would earn from employment, and in no case can ESST be paid at a rate below the applicable minimum wage. If there is a lack of compensation history, one method is using an employee's last several paychecks to divide their total gross earnings by their total hours worked to determine an hourly rate for ESST purposes.

Example 1: Acme pays their drivers on an hourly basis.

- Acme would pay out any ESST time based on the hourly rate for the employee

Example 2: Acme pays their drivers an annual salary.

- Acme could take the annual salary and divide it by 2,080 hours (40 hours per week) to determine an hourly rate
- If an Acme driver makes \$60,000 as an annual salary, Acme could use \$28.85 as an hourly rate to pay out ESST time
- $\$60,000 / 2,080 = \28.85 per hour

Example 3: Acme pays their drivers on a per-mile basis.

- Acme could create a method to determine the hourly rate based on a driver's past history.
- For Acme's drivers who have been with the company for a while, Acme could look at the driver's earnings over the past month/quarter/year to determine an hourly rate
- An Acme driver (employed for 3 years) has earned \$20,000 in the last fiscal quarter (13 weeks). Acme could estimate the driver's hourly rate would be \$36.48 per hour
- $13 \text{ weeks} \times 40 \text{ hours} = 520 \text{ hours}$
 $\$20,000 / 520 \text{ hours} = \38.46 per hour

Example 4: Same facts as example 3 above, however, Acme has a new driver that doesn't have historical data to look at.

- For new drivers to Acme, Acme would have to utilize the recent pay period data they would have.
- A driver starts working for Acme and earned \$2,000 during their first pay period (2-week or 10-day period). Acme could estimate that the driver's hourly rate would be \$25.00
- $\$2,000 / 80 \text{ hours} = \25.00 per hour
- Acme would have to continue to modify their calculation until they had a full quarter of history (based on the method established in Example 3)
- So for the driver's second pay period, they earned \$2,200 for the pay period (2-week or 10-day period). Acme could estimate that the driver's hourly rate would be \$26.25
- $\$2,000 + \$2,200 = \$4,200$ total earned
 $\$4,200 / 160 \text{ hours} = \26.25 per hour

Example 5: Acme pays their drivers based on a percentage of the loads they haul

- Acme could create a method to determine the hourly rate based on a driver's past history.
- For Acme's drivers who have been with the company for a while, Acme could look at the driver's earnings over the past month/quarter/year to determine an hourly rate
- An Acme driver (employed for 3 years) has earned \$20,000 in the last fiscal quarter (13 weeks). Acme could estimate the driver's hourly rate would be \$38.46 per hour
- $13 \text{ weeks} \times 40 \text{ hours} = 520 \text{ hours}$
 $\$20,000 / 520 \text{ hours} = \38.46 per hour

Example 6: Acme pays its drivers based on a per-mile basis. However, Acme has a policy of paying their drivers \$20.00 per hour for detention and incidentals

- Acme could use \$20.00 as the hourly rate for ESST time
 - **Note:** This may not provide the same compensation as if the driver was actually working

No matter what method is used, the employer's rate must at least be the state or applicable local minimum wage.

STEP THREE: UPDATE HANDBOOK AND COMMUNICATE

If changes are made to your policy, make sure to update your employee handbook and communicate these changes to each employee

ADDITIONAL RESOURCES AND INFORMATION

- [Minnesota Department of Labor and Industry website](#)
- [Minnesota Department of Labor and Industry Frequently Asked Questions](#)

Correspondence with MN Department of Labor and Industry Commissioner Nicole Blissenbach (12/4/23)

Question:

How should trucking companies calculate the rate of pay for earned safe and sick time?

Answer:

ESST must be paid at the hourly rate of pay for the shift for which the leave is being used. The ESST law does not include a specific formula or method to calculate the wage rate in situations where employers pay employees through piece rates, by the mile, a daily rate or other another non-straight hourly rate system. An employer who uses one of these types of pay systems can create a method to calculate the hourly rate an employee would have received if they had worked. For example, an employer could use an employee's last three paychecks to divide their earnings by their total hours worked to determine an hourly rate. An employer could alternatively determine what similarly situated employees, who performed the same duties the employee would have performed, earned during the time period ESST was used. For trucking industry employers, there may be other methods to calculate an hourly wage that would be more appropriate. No matter what method is used, the employer's rate must at least be the state or applicable local minimum wage.

Question:

How should hours be accrued for purposes of ESST if the hours are not front-loaded?

Answer:

Employers must provide each employee in Minnesota with one hour of ESST for every 30 hours worked, up to at least 48 hours a year, unless the employer frontloads at least 48 hours at the beginning of the accrual year. While the ESST law does allow employers of federally exempt professional, administrative, and executive employees to assume a 40-hour workweek for those employees, it does not include this allowance for state and federally-exempt truck drivers. The ESST law requires employers to retain accurate records documenting hours worked by employees and ESST taken (Minn. Stat. §181.9774, subd. 10). This is an obligation separate and distinct from the obligations in chapter 177. So, while some truck drivers are excluded from the definition of employee in Minn. Stat. § 177.23, they are not excluded in the ESST law. Similar to determining the hourly wage rate, employers of these employees could create a method to calculate the number of hours an employee worked during a pay period, which could then be used to determine the number of ESST hours the employee accrued. As mentioned in the first sentence, an alternative to the ESST accrual system is front-loading. For more information about front-loading options see DL ESST FAQ question, ["How does "front-loading" versus accrual of hours affect carry over into the next year under Minnesota's ESST law?,"](#)

Sample ESST notice from MN DIL website

[ESST sample notice.docx \(live.com\)](#)