

MINNEAPOLIS DEPARTMENT OF CIVIL RIGHTS SICK AND SAFE TIME ORDINANCE FREQUENTLY ASKED QUESTIONS

This document is intended to provide the public with information about how the City of Minneapolis Department of Civil Rights may guide its personnel in processing and investigating reported violations and interpreting the Minneapolis Sick and Safe Time Ordinance.

Revised: January 2020

Scope: This document provides general information and guidance on implementation and enforcement of the City’s Sick and Safe Time Ordinance, Minneapolis Code of Ordinances, [Title 2, Chapter 40](#). Employees may have additional rights under other local, state or federal laws, such as family and medical leave, disability, labor relations, workers compensation and other laws. This guidance does not address any employer obligations with respect to these other laws. Terminology used in this guidance is defined in Minneapolis Code of Ordinances [Title 2, Chapter 40](#).

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General information:

1.) Q: What is the Minneapolis Sick and Safe Time Ordinance?

A: The Sick and Safe Time Ordinance is a law in Minneapolis that guarantees time off work for all employees – including full-time, part-time and temporary employees or paid interns – working in Minneapolis.

2.) Q: Why was the Sick and Safe Time Ordinance created?

A: The ordinance is intended to allow employees to care for themselves and family members, making Minneapolis a healthier, more secure, and more productive community.

3.) Q: Who does the Sick and Safe Time Ordinance benefit?

A: Limiting the spread of contagious illness improves public health and benefits everyone. Employees working in lower wage, higher turnover and public contact jobs concentrated in Minneapolis previously lacked at disproportionate rates access to paid sick leave.

Employers with six or more employees must provide paid sick and safe time. Employers with fewer than six employees must provide sick and safe time, but they may choose to provide it unpaid. In addition, until July 1, 2022, during an employer’s first year of operation (except a new location in an existing chain), it may provide sick and safe time as unpaid.

4.) Q: When does the Sick and Safe Time Ordinance take effect?

A: The Sick and Safe Time Ordinance takes effect July 1, 2017.

5.) Q: Can employers give employees more sick leave than the amount required by the Sick and Safe Time Ordinance?

A: Yes. Employers may provide more generous benefits. The Sick and Safe Time Ordinance requirements create a minimum floor, not a ceiling.

Basic requirements:

6.) Q: What does “accrual” mean?

A: Accrual describes how something increases. As time passes and an employee works more, she accrues more sick and safe time hours.

7.) Q: When does an employee begin to accrue sick and safe time?

A: After the ordinance takes effect on July 1, 2017, an employee begins to accrue sick and safe time hours whenever she starts working. Although an employee accrues sick and safe time beginning on the first day of work, an employer may record those sick and safe time hours per pay period (see question #9) and prohibit the employee from using sick and safe time during an initial 90 calendar days of employment (see question #27).

8.) Q: At what rate does an employee accrue sick and safe time?

A: The minimum rate at which an employee accrues sick and safe time is one hour for every 30 hours worked in the City.

Scenario:

Julian has worked 120 hours. How many sick and safe time hours has he accrued? Julian has accrued four sick and safe time hours. After 150 hours worked, he will accrue a fifth sick and safe time hour.

9.) Q: How frequently must an employer calculate and record sick and safe time hours?

A: Employers may calculate and record sick and safe time hours at the same frequency as the employer's other typical payroll practices (e.g. per pay period, weekly, bi-weekly, twice-per-month etc.), as long as it is recorded at least once per month.

10.) Q: Do employees accrue sick and safe time in hour-unit increments?

A: Yes. Sick and safe time accrues in increments of whole hours, not fractions of an hour. Upon completion of every 30 hours worked, an employee accrues at least one additional hour of sick and safe time. Employers may exceed this minimum standard by recording time in fractions of an hour if they choose.

Scenario:

Employee Aamina has worked 80 hours. How many hours of sick and safe time has she accrued? She has accrued at least two sick and safe time hours. Her employer may choose to record additional time in fractions of an hour. If Aamina continues, at the end of 1440 hours worked in Minneapolis, she has accrued at least 48 (1440/30) hours of sick and safe time, recorded at least monthly. See questions #21 and #25 for more information about alternative accrual methods and scenarios.

11.) Q: Must an employer allow accrual when an employee is not working (e.g. on vacation or out sick)?

A: No. The ordinance does not require that sick and safe time accrue when an employee is not working.

12.) Q: How does an employee who is paid based on productivity accrue sick and safe time hours?

A: When an employee is compensated based on her productivity, her accrual of sick leave is measured by the actual length of time spent performing work.

13.) Q: How does an exempt employee accrue sick and safe time hours?

A: Exempt employees (employees who are exempt from overtime pay requirements under the federal and Minnesota wage-hour laws)¹ are presumed to work 40 hours per week for the purposes of sick and safe time accrual. In instances where there is clear evidence that an exempt employee's regular work week is less than 40 hours, sick and safe time accrues based upon that employee's actual regular work week.

14.) Q: Do sick and safe time hours accrue on overtime hours worked?

A: For an employee who is not exempt from earning overtime compensation under federal and Minnesota wage-hour laws, sick and safe time hours accrue on all hours worked, including overtime hours.

Carryover and caps:

15.) Q: Does an employee lose accrued and unused sick and safe time hours at the end of the benefit year?

A: No. Accrued and unused hours do not expire at the end of the benefit year (unless an employer chooses to front-load sick and safe time hours as explained in questions #21 and #22). An employee's accrued and unused sick and safe time hours is the employee's "bank".

16.) Q: Do unused sick and safe time hours "carry-over" from year to year?

A: Yes, employers must "carry-over" each employee's accrued and unused sick and safe time hours to the following benefit year (unless an employer chooses to front-load sick and safe time hours as explained in questions #21 and #22). However, accrual may be capped as explained below in questions #18 and #19.

¹ Employees who are exempt from overtime requirements are generally those employees who are paid on a salaried basis and qualify as supervisors, administrative or professional employees. For more information visit <http://www.dli.mn.gov/Is/OtExempt.asp> and <https://www.dol.gov/compliance/guide/minwage.htm>.

Scenario:

Employee Anthony accrued 30 hours by the end of the first benefit year of his employment. However, he did not use any. His employer must carry-over those 30 hours into the following benefit year. Employee Anthony may then accrue additional hours.

17.) Q: What does “benefit year” mean?

A: “Benefit year” or “year” means any consecutive 12-month period of time as determined by an employer. Most employers will find it helpful to use one of the following:

- Calendar year that runs from Jan. 1 to Dec. 31
- Tax year
- Fiscal year
- Year running from an employee’s anniversary date of employment

Whichever method an employer chooses to measure the benefit year, once established it must be communicated to employees and applied similarly for all employees. Employers must use a consistent measuring period from year to year and from employee to employee.

18.) Q: Is there a “cap” on how many sick and safe time hours an employee can accrue?

A: Yes. Employers may set a “cap” or “limit” on each employee’s accrual. Employers must allow each employee to accrue at least 48 hours per year, carried over from year to year, until an 80 hour maximum accrual cap is reached. These two limits operate in tandem. These limits of 48 hours per benefit year and a maximum accrual cap of 80 hours per employee may be higher if an employer chooses, but not lower.

Scenario:

Lyndale Consultants limits its employees’ accrual of sick and safe time to the minimum standard of 80 hours. Anthony accrued 30 sick and safe time hours by the end of the first benefit year of his employment. These 30 hours carried over into the second benefit year, during which he accrued an additional 48 hours.

What happens during the third benefit year? Anthony accrues an additional two sick and safe time hours (30 hours + 48 hours + 2 hours) before stopping at a limit of 80 hours. He must use some accrued hours in his “bank” of 80 hours before accruing more sick and safe time.

19.) Q: Once an employee reaches his benefit year cap or maximum accrual cap of sick and safe time hours (if an employer has set one), does he receive credit for additional hours worked?

A: No. Once an employee reaches the yearly cap of 48 hours, he no longer accrues sick and safe time hours for that benefit year. Once an employee reaches 80 hours through carry-over and accrual, he no longer accrues additional hours (even if the yearly cap is not yet met) until he uses some of the hours he has "in the bank." These two limits, 48 hours per benefit year and a maximum accrual cap of 80 hours, operate in tandem. The limits may be higher if an employer chooses, but not lower.

Scenario:

Employee Anthony reached his overall accrual cap of 80 hours. Later, Anthony uses eight hours, reducing his bank to 72 (80 – 8). Upon his return to work, he begins accruing again. Following an additional 240 hours worked (240/30 = 8), he replenished his bank back up to 80 hours (72 +8).

20.) Q: May employers who use a January through December benefit year prorate the accrual cap for July 1, 2017 through December 31, 2017?

A: Yes, because the ordinance takes effect mid-year 2017, employers may cap accrual for July 2017 through December 2017 at 24 hours. Employers must carryover each employee's accrued and unused sick and safe time hours into 2018.

If from January 2017 through June 2017, an employee accrued sick and safe time hours (i.e. a type of leave that can be used for all sick and safe time purposes, e.g. sick leave, vacation, or PTO etc.), the employer may count that towards accrual for purposes of compliance for an entire benefit year 2017.

Front-loading of hours:

21.) Q: What is "front-loading"?

A: Front-loading is an alternative method of accrual for employers who want to reduce the calculations and record keeping required of per-pay-period (e.g. weekly, bi-weekly, twice-a-month or monthly) accrual. This option allows employers to record accrual only once per year and avoid carryover from year to year. Employees get immediate access to the front-loaded hours at the beginning of each benefit year and do not accrue hours throughout the year.

22.) Q: For employers who choose this option, how many hours must be "front-loaded"?

A: An employer who chooses this option must front-load at least 48 hours for use during the employee's first benefit year. This amount may be prorated if an employee starts at a time when

the benefit year is already in progress. This includes all employees employed as of July 1, 2017 (e.g. July 1 through December 31 would be prorated at 24 hours).²

At the beginning of each subsequent benefit year, an employer must front-load the employee at least 80 hours to fulfill accrual and carryover requirements.³

Scenario:

Mumtaz is a business owner. She employs Sara and front-loads Sara's sick and safe time hours once per year. At the beginning of Sara's first benefit year of employment, Mumtaz front-loaded 48 hours into Sara's bank. At the beginning of Sara's second benefit year and every year thereafter, Mumtaz front-loaded 80 hours into Sara's bank. Has Mumtaz complied with the accrual and carryover requirements of the Sick and Safe Time Ordinance? Yes. Must she provide additional hours? No.

23.) Q: May an employer front-load yearly sick and safe time hours for part-time employees?

A: Yes. However, to avoid carryover, an employer must front-load an employee at least 80 hours (or 48 hours during the first benefit year) at the beginning of every year. Alternatively, employers may provide 48 hours per year and carryover any unused hours into subsequent years (subject to an 80 hour overall cap).

24.) May an employer treat part-time and full-time employees differently, for example, front loading sick and safe time for some but not others?

A: Yes. As long as an employer provides all employees at least what the employees are entitled under the ordinance, an employer may provide some but not other employees more or different benefits. (Warning: compliance with the Sick and Safe Time Ordinance does not guarantee compliance with other civil rights protections or all applicable laws.)

25.) Q. Are there alternative accrual options other than "front-loading" available to employers?

A: Yes. Employers may provide sick and safe time hours in advance of hours worked while continuing to provide the carryover of each employee's unused sick and safe time hours from the previous year (subject to an 80 hour overall cap). This approach requires more individualized

² If from January 2017 through June 2017, an employee was front-loaded sick and safe time hours – i.e. a type of leave that can be used for all sick and safe time purposes, e.g. sick leave, vacation, or PTO etc. – the employer may count that towards accrual for purposes of compliance for an entire benefit year 2017.

³ Alternatively, employers may carryover any unused hours into subsequent years (subject to an 80 hour overall cap) and provide sick and safe time hours in advance of hours worked (e.g. 48 at the beginning of each benefit year). See #25 and #26 below for more information.

yearly calculations but fulfills all accrual and carryover requirements of the Sick and Safe Time Ordinance.

Scenario:

Mumtaz is a business owner who employs Sara and provides sick and safe time hours per year. At the beginning of Sara's employment, Mumtaz provides Sara 48 hours. Sara does not use any of these hours and the hours carry-over into the next benefit year. At the beginning of the second benefit year, Mumtaz adds an additional 32 hours, up to the 80 hour overall cap.

During the second benefit year, Sara uses 70 hours. At that point in time, Mumtaz could provide Sara 16 hours (before reaching the 48 hours benefit year cap) or allow Sara to accrue one hour for every 30 hours worked (up to the 48 hours benefit year cap).

26.) Q: Can an employer credit sick and safe time hours for employees on a weekly, monthly, or quarterly basis etc. ahead of hours worked?

A: Yes, nothing in the Sick and Safe Time Ordinance prevents employers from allowing an employee to access sick and safe time hours in advance of hours worked. An employer may calculate and credit accrual ahead of hours worked. However, employers must ensure that a sufficient number of hours are given. To avoid calculating accrual and carryover, see questions #21 and #22.

Failure to credit enough hours in advance (at least one hour per 30 hours worked, up to yearly and overall caps of at least 48 and 80 hours) must be remedied within one month to avoid a violation of the Sick and Safe Time Ordinance.

Scenario:

Full-time (40 hour per week) employee Aamina has completed 1440 hours of work in Minneapolis during the first nine months of the benefit year. Aamina has thus far banked at least 48 (1440/30) hours of sick and safe time. Aamina's employer could have planned ahead of time the schedule for allowing Aamina access to accrued sick and safe time hours. For example, it may record six hours per month for eight months; three hours bi-weekly (or twice-per-month) for eight months; or five and one third hours per month for nine months. In comparison, four hours recorded per month evenly across the entire benefit year would fail to provide Aamina access her accrued time soon enough. Her employer's compliance depends upon both the amounts and frequency with which it allows Aamina access.

Use of sick and safe time:

27.) Q: Is there a period of time allowed at the beginning of employment when an employee may not use sick and safe time?

A: Yes, although an employee begins to accrue sick and safe time immediately, an employer may enforce a 90 day period before allowing an employee to use any banked sick and safe time hours. Following the first 90 calendar days of employment, an employee must be allowed to access sick and safe time as it is recorded. These 90 calendar days of employment may be completed prior to July 1, 2017.

Scenario (a):

Employee Alicia's first day of work was Aug. 10. At that time, all of her hours worked must count for the purposes of sick and safe time accrual (i.e. her bank begins to grow immediately). When could she begin to *use* this sick and safe time? Her employer may require her to wait 90 days, until Nov. 8.

Scenario (b):

As of July 1, 2017, employee Anthony has been employed by the same employer for several years. Must Anthony wait 90 days to use sick and safe time? No, as of July 1, 2017, Anthony has already completed 90 calendar days of employment.

28.) Q: What may an employee use sick and safe time for?

A: An employee may use her banked sick and safe time hours to care for her own health or the health of a family member or member of household, or to address issues caused by domestic violence, sexual harassment, or stalking.

29.) Q: What absences qualify as caring for an employee's or a family member's health?

A: Qualifying absences for health reasons include each of the following:

- Diagnosis, treatment, recuperation, or preventative care for a medical or mental health condition, illness, or injury
- Medical or mental health emergencies
- Closure of an employee's place of business for public health reasons
- Care for a family member or member of household due to unexpected closure of their school or place of care, including for inclement weather

30.) Q: What absences qualify as "safe time"?

A: When an employee or family or household member is experiencing domestic violence, sexual assault, or stalking, the employee may use sick and safe time hours for activities such as:

- Medical and psychological counseling
- Relocation, victim services, and other safety planning
- Seeking a restraining order or legal counsel
- Participating in a legal proceeding

31.) Q: Who is considered a family member or member of household?

A: Family member or member of household means:

- The employee's child, step-child, adopted child, foster child, adult child, spouse, sibling, parent, step-parent, mother-in-law, father-in-law, grandchild, grandparent, guardian, ward, or registered domestic partner
- People who currently reside in the employee's home

32.) Q: What is "preventive care"?

A: Preventive care is routine health care such as screenings, vaccinations, checkups, and patient counseling to prevent illnesses, disease, or other health problems. Preventive care may include things like doctor, dentist, or eye doctor appointments.

33.) Q: May an employee use sick and safe time hours following the birth of a child?

A: Yes, an employee may use sick and safe time hours during any period of physical or mental recuperation after she gives birth. An employee may also use sick and safe time hours to care for a covered family member after the family member gives birth. An employee may use sick and safe time hours to care for a covered child's need for medical diagnosis, care, or treatment of an illness, injury, or health condition, or preventive medical or physical care.

34.) Q: May sick and safe time hours be used to care for an adult over the age of 18?

A: Yes. No age restriction applies to the care of a family member.

35.) Q: May an employee use sick and safe time hours at the same time as other protected leave under other state or federal laws?

A: Yes. Nothing prevents an employee from using sick and safe time hours concurrently (at the same time) with the Family and Medical Leave Act (FMLA) or other protected leave to mitigate wage loss. Hours used by an employee as sick and safe time may also be counted by an employer toward concurrent entitled leave under federal or state law, such as the FMLA. Federal and state laws, such as the FMLA, Americans with Disabilities Act, or the Minnesota Human Rights Act, take

precedence when they require employers to do more than the Minneapolis Sick and Safe Time Ordinance.

For more information concerning the FMLA, visit the U.S. Department of Labor website at <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>.

36.) Q: Is there a cap on the amount of sick and safe time hours that an employee may use?

A: An employee may use all of the sick and safe time hours that she has banked at any given time. Although employers may set limits on accrual, there are no limits on use allowed in the Sick and Safe Time Ordinance.

Scenario:

Employee Sara has accrued 80 sick and safe time hours that carryover to a new benefit year (unless her employer chooses to front-load hours as explained in questions #21 and #22). She had surgery and requests to take off two weeks—all of the sick and safe time she has banked. May her employer impose restrictions on how much of her sick and safe time Sara uses? No. All of her banked hours are available for her to use and she may accrue additional hours (up to yearly and overall caps) to replace them after their use. She can use all 80 hours to recuperate from her surgery.

During the new benefit year, Sara uses 70 hours. At that point in time, her employer could provide Sara 16 hours (before reaching the 48 hours benefit year cap) or allow Sara to accrue one hour for every 30 hours worked (up to the 48 hours benefit year cap).

Paid Time Off and vacation plans:

37.) Q: If an employer offers a Paid Time Off (PTO) plan or other sick or vacation leave, does that satisfy the requirements of the ordinance?

A: The name of an employer's paid time off plan or other leave policy does not matter. A PTO plan (or any other type of leave, including sick or vacation) can satisfy the Sick and Safe Time Ordinance requirements *if* the plan: (1) provides employees at least as much leave as required by the ordinance; and (2) allows employees to use the leave for all of the reasons and under the same conditions required by the ordinance. Some existing plans and procedures may need changes to fulfill the minimum thresholds set by the ordinance.

A checklist of Sick and Safe Time Ordinance requirements is available at <http://www.minneapolismn.gov/www/groups/public/@citycoordinator/documents/webcontent/wcmsp-187583.pdf>.

Scenario:

An employer offers 80 hours of PTO per year. Does it need to begin referring to its PTO as “sick and safe time”? No. The law does not require explicit reference to any employee programs or leave as “sick and safe time”. The name used by employers does not matter. The amounts and conditions of use for time off work determine whether or not a PTO policy complies with the Sick and Safe Time Ordinance. For example, advance notice requirements for approval of PTO when used for vacation cannot be applied in a case of sudden illness. See the frequently asked questions sections entitled “use of sick and safe time” and “usage monitoring and restrictions” for more information.

38.) Q: When does an employer need to offer additional sick and safe time hours?

A: If an employer offers PTO or vacation days that may be used for any purpose and under the same conditions outlined in the Sick and Safe Time Ordinance, at a rate of at least 1 hour per thirty hours worked, the employer is not required to offer additional leave. However, it may choose to do so. An employer may also combine amounts of sick leave and vacation or PTO it offers to cumulatively meet the minimum threshold amounts required under the ordinance.

Scenario:

An employer offers each of its employees 80 hours paid per year of time off to use for any purpose. The time off is available throughout the benefit year. Is the employer in compliance with the Sick and Safe Time Ordinance? Yes, the employer complies with the ordinance, provided that any conditions of use are consistent with the ordinance. See the Frequently Asked Questions section entitled “conditions of use” for more information.

39.) Q: If an employer uses a PTO plan (or any other type of leave that encompasses all sick and safe time ordinance purposes) to comply with the ordinance, does the employer need to track how an employee uses leave and ensure sufficient amounts are used for sick and safe time purposes?

A: No. Employers must provide access to leave that may be or may have been used for sick and safe time purposes. An employee who chooses to use this leave for other purposes is not entitled to additional sick and safe time.

Record-keeping and notice requirements:

40.) Q: What records must employers retain?

A: Employers may adopt or retain any record-keeping policies or practices, as long as their records indicate:

- For non-exempt employees, hours worked;
- Hours of leave available for sick and safe time purposes; and
- Hours of leave used

Employers must retain these records for three years in addition to the current year and allow access to the employee and/or the Minneapolis Department of Civil Rights upon request.

41.) Q: Are employers required to inform employees of their rights under the Sick and Safe Time Ordinance?

A: Yes. As of July 1, 2017, employers must display a Minneapolis Department of Civil Rights (MDCR)-provided workplace poster, within each of their facilities in Minneapolis in a conspicuous and accessible location. The poster should be displayed where employees can easily read it. Employers must display the poster in English and in each of the primary language(s) spoken by employees at the particular workplace. An employer that provides an employee handbook to its employees must also include in the handbook a copy of the workplace poster or other notice of rights and remedies available under the Sick and Safe Time Ordinance.

The required workplace poster is available for download in a variety of languages here: <http://sicktimeinfo.minneapolismn.gov/employer-resources.html>.

42.) Q: What are the requirements for notifying employees about their balance of available sick and safe time hours?

A: Under *the Sick and Safe Time Ordinance*, employers must provide this information upon request. However, effective January 1, 2020, the Minneapolis Wage Theft Prevention Ordinance additionally requires that certain information about available Sick and Safe Time accrual balance be automatically provided on employee pay stubs. Please see Wage Theft FAQ #33 at <http://minneapolismn.gov/laborenforcement> for more information.

Usage monitoring and restrictions:

43.) Q: May employers require employees to provide advance notice of Sick or Safe Time absences?

A: It depends.

For leave that is *foreseeable*, employers may request notice ahead of time – or as early as possible – but may not require such notice more than seven days in advance.

For *unforeseeable* leave, an employer may require notice as soon as is practicable.

Scenario (a):

Employee Leo works for Commercial Cleaning Inc., which typically requires its employees to provide at least 24 hours advance notice of any absence. Two hours prior to Leo’s shift, a family member calls Leo from the hospital regarding a serious car accident involving Leo’s son. May Leo use sick and safe time in these circumstances? Yes. In this situation, Leo need not comply with Commercial Cleaning Inc.’s 24 hour advance notice policy; rather, he should provide Commercial Cleaning Inc. with notice as soon as practicable, under the circumstances. Refusing to allow Leo’s sick and safe time use during this medical emergency would constitute a violation of the Sick and Safe Time Ordinance.

Scenario (b):

Jackson owns Enterprise and employs Bernice. Enterprise has a policy requiring at least seven days advance notice (or as soon as practicable) from its employees of sick and safe time use or other types of leave. Bernice schedules a well child check-up for her daughter several months in advance but forgets to inform Enterprise until two days before the appointment. Can Enterprise deny Bernice’s request to use sick and safe time or refuse to compensate Bernice for work hours scheduled during her daughter’s doctor’s appointment? Yes. The Sick and Safe Time Ordinance allows employers to maintain a policy requiring advance notice, when foreseeable. Health care visits scheduled in advance are foreseeable.

44.) Q: How does an employee request use of sick and safe time hours?

A: The method for notifying an employer of a need to use sick and safe time hours depends mostly on the employer’s practices and policies. The Sick and Safe Time Ordinance does not replace an employer’s reasonable expectations for communication from its employees.

45.) Q: What are some examples of reasonable procedures and methods for notifying an employer of an absence?

A: Examples of reasonable procedures include instructing the employee to call a designated phone number to leave a message, following a uniform call-in procedure, or using another reasonable and accessible means of communication identified by the employer. An employer must consider the individual facts and circumstances of each situation in determining at what point it is practicable for an employee to give notice.

46.) Q: Must an employee specifically ask to use “sick and safe time”?

A: No. An employee is not required to specifically ask for “sick and safe time” or reference the Sick and Safe Time Ordinance when requesting sick and safe time hours. Employees simply must state their need for an absence for a reason covered by the ordinance. It can be as simple as “I am sick and need to miss my shift today.” If an employee calls in sick, the employer should assume the employee intends to use accrued sick and safe time, unless the employee asks the employer to consider another arrangement.

47.) Q: May an employer require an employee to provide specific details about the reason for use?

A: Generally, no. An employer may not require an employee or a health care provider to specify the detailed nature of the employee’s or the employee’s family member’s injuries, illness, condition, services, or emergency, except as allowed by other laws (e.g. Family Medical Leave Act).

48.) Q: Does an employer have to keep medical information about employees confidential?

A: Yes. An employer must keep health and safety information about an employee or an employee’s family member obtained solely because of the Sick and Safe Time Ordinance confidential unless the employee permits disclosure or disclosure is required by law.

49.) Q: Does an employee have to provide documentation for use of sick and safe time?

A: An employer may not link approval or compensation to the employee providing documentation from a third party such as a medical professional, unless:

- Clear evidence of misuse exists (for explanation and examples, see question #50); or
- The employee is absent for more than three consecutive scheduled workdays (i.e. three days on which he was scheduled to work, not necessarily consecutive business days or calendar days).

Scenario:

Employee Alicia has now been out four consecutive scheduled workdays because of illness. May Alicia’s employer require her to submit documentation from the doctor? Yes, Alicia’s employer may condition approval and compensation of sick and safe time hours on evidence that Alicia indeed consulted a doctor because she has been out for more than three consecutive days.

Note: Employers also may require documentation as allowed by other laws (e.g. Family Medical Leave Act).

50.) Q: What is “clear evidence” of misuse by an employee?

A: “Clear evidence” of sick and safe time misuse shows that an employee is highly likely to have engaged in an activity that is not consistent with the employee recuperating or otherwise using the time for a legitimate sick and safe time purpose. It results in an employer’s reasonable, good faith suspicion. It is determined on a case-by-case basis.

Examples include but are not limited to: (a) using sick and safe time hours on days when an employee’s request for vacation has been denied, (b) a contemporaneous social media photo or post of the employee that conflicts with his stated reason for using sick and safe time, or (c) a consistent pattern of circumstantial evidence.

Note: An employee who uses sick and safe time hours for purposes other than those authorized under the Sick and Safe Time Ordinance is not protected by the ordinance.

51.) Q: May employers ask an employee whether sick and safe time was used for a permissible purpose?

A: Yes and the employer may ask the employee to state as much in writing.

An employer may:

- Request that an employee confirm verbally or state in writing that he used sick and safe time hours for a permissible purpose
- Ask if an employee has received or will receive any health care or other services and then require documentation of such services for absences of more than three consecutive workdays

Examples of documentation of health care services include:

- A copy of a note from a health care provider
 - A copy of medical records or other written receipt of health care services provided
- Ask for a date on which the employee will return

Scenario:

Talia calls in sick because of illness and states that she plans on visiting a medical clinic for diagnosis and treatment. May her employer require documentation from this health care provider? No, because Talia has not been away from work for more than three consecutive workdays. However, Talia may voluntarily provide a doctor’s note if she chooses, and her employer may request that upon her return to work she state in writing

that she used sick and safe time for a permissible purpose. Employers must maintain the confidentiality of sensitive information shared by an employee.

52.) Q: May an employer require a minimum amount of time per use?

A: Yes. An employer may require its employees to use at least four hours per occurrence. This minimum-amount-per-use may be set at any amount up to four hours but may not exceed four hours.

Scenario (a):

Mississippi Corner Store requires its employees to use a minimum of four sick and safe time hours per occurrence. Employee Abdi calls a half hour before he is scheduled to work to say he feels ill and will be late. Abdi wants to use one hour of sick and safe time. May Mississippi Corner Store require him to use a minimum of four hours? Yes.

Scenario (b):

24th Street Bar and Grill requires its employees to use a minimum of four sick and safe time hours per occurrence. Employee Erica is scheduled to work back to back shifts. She plans on being away from work that day at noon for two hours to attend her daughter's doctor appointment. She gives her employer proper advance notice of the appointment. May she use sick and safe time for just two hours? No, 24th Street Bar and Grill may require Employee Erica to use a minimum of four sick and safe time hours for her daughter's doctor appointment. Employee Erica should return to work at four o'clock.

53.) Q: May an employee trade shifts or work alternative hours instead of using sick and safe time?

A: Yes. With *mutual* employer and employee consent, employees may suggest working additional hours or trading shifts instead of using sick and safe time hours. However, the employer may not unilaterally require an employee to work an alternate shift or reduce normally scheduled hours to avoid use of sick and safe time hours.

54.) Q: Are employees required to find their own replacement when they use sick and safe time?

A: No. An employer may not require an employee to find a replacement to "cover a shift" as a condition for using sick and safe time.

55.) Q: May an employer have a policy that permits employees to donate unused sick and safe time hours to other employees?

A: Yes. An employer may have a policy that allows employees to donate unused sick leave to other employees, as long as the policy is voluntary.

56.) Q: May employees use sick and safe time hours during overtime that they were scheduled to work?

A: Yes. An employer must allow employees to use sick and safe time for all hours they are scheduled to work, including any mandatory regular or overtime hours. However, sick and safe time hours are paid at the employees' regular rate of pay.

57.) Q: When, because of last-minute shift scheduling changes, may an employer reject an employee's use of sick and safe time?

A: If an employee requested a shift occurring within twenty-four (24) hours of the employee's request, then an employer may reject use of sick or safe time during that shift. Otherwise, employers must allow legitimate sick and safe time use for all hours scheduled to be worked.

Scenario:

On Monday, Anthony's employer offers him an extra shift to cover a co-worker's shift occurring on Thursday. Anthony accepts. On Thursday, Anthony's daughter becomes ill and must stay home from school.

May Anthony use sick and safe time hours to care for his daughter? Yes, Anthony did not proactively request the shift (it was offered to him and he accepted it). Furthermore, this communication did not occur within twenty-four (24) hours prior to the shift. In comparison, if Anthony (1) normally exercises control of his work schedule and (2) volunteered to work a shift within twenty-four (24) hours, then his employer may deny his use of sick and safe time.

58.) May an employer deny use of sick and safe time for particularly "critical" employees or during times of heightened importance?

A: No. There is no exemption in the Sick and Safe Time Ordinance for "critical" employees or exigent business circumstances. Employers should encourage consistent employee attendance and plan for the occurrence of emergency staffing situations regardless of the Sick and Safe Time Ordinance.

Rate of pay for sick and safe time hours:

59.) Q: What is the sick and safe time rate of pay for an employee who is paid an hourly wage?

A: Compensation for the use of sick and safe time hours for employees who are paid an hourly wage is the employee's hourly wage (including shift differentials where applicable).

60.) Q: Is an employee entitled to be compensated for tips, commissions, bonuses, or overtime that might have been lost while they were off of work using sick and safe time?

A: No. An employee is not entitled to lost tips, commissions, bonuses, or overtime payments (i.e. one and a half times the regular rate or more) during use of sick and safe time hours. However, the employer must pay the employee at least the legal minimum wage for sick and safe time hours used.

61.) Q: How does an employer calculate hourly sick and safe time compensation for a salaried employee who has no set schedule?

A: Employees who are paid an annual salary and are exempt from overtime laws, as provided under the Fair Labor Standards Act and/or Minnesota wage and hour laws, are deemed to work 40 hours a week for purposes of accruing and using sick and safe time. If any employee normally works less than 40 hours a week, then she will accrue and use sick and safe time based upon her normal work week. Employers have no obligation to pay an employee more than her full salary for her use of sick and safe time.

62.) Q: If an employee has two different jobs for the same employer, what should the rate of pay be for sick and safe time hours used?

A: The rate of pay for the employee's use of sick and safe time should be the rate of pay for the job/shift the employee was scheduled to work.

63.) Q: If an employee is paid based on production instead of time, at a "piece rate," what should the rate of pay be for sick and safe time hours used?

A: If rate of pay is determined by a fixed "piece rate" for each unit produced or action performed regardless of time, employers must calculate in good faith an average or typical hourly rate based on the employee's comparable recent earnings history for similar jobs or shifts.

64.) Q: How does an employer compensate an employee who uses sick and safe time hours for a shift of indeterminate length?

A: An employer may determine reasonable payment based on hours worked by similarly-situated employees who worked that same (or similar) shifts in the past or calculate an average or typical length of shift based on the employee's work history.

65.) Q: How quickly must an employee be compensated for her use of sick and safe time hours?

A: Sick and safe time use must be compensated in the same manner and at the same time as the employee would have received compensation for hours worked.

66.) Q: Can employers “cash out” or otherwise raise employee wages in lieu of providing sick and safe time?

A: Sick and safe time rights and responsibilities may not be waived or cashed out to discourage use. However, sick and safe time hours may be paid (or cashed out) in advance of use if the equivalent time off remains available for use unpaid. Moreover, if an employer chooses to front-load sick and safe time hours on a yearly basis it may choose to cash out unused hours at the end of each year. See questions #21 and #22 for more information about front-loading.

67.) Q: Are employers required to pay out unused sick and safe time at the end of an employment relationship?

A: No. Nothing in the Sick and Safe Time Ordinance requires employers to allow employees to pay out unused sick and safe time hours at the time the employment relationship is terminated. However, employers may choose to do so.

Determining employer size:

68.) Q: How does an employer determine its size?

A: Employer size is based upon the average number of employees per week during the previous calendar year. Employers with an average of less than six employees must provide sick and safe time, but they may choose to provide it unpaid.

69.) Q: Which employees are included in a business size calculation for purposes of the Sick and Safe Time Ordinance?

A: An employer must include all paid employees, no matter where they perform their work, in a business size calculation. "Employee" includes full-time, part-time, temporary and intermittent employees or paid interns.

Scenario (a):

Employer Josie owns a small restaurant and thus does not count herself as an employee. For several years, she has employed three part-time employees and two full-time employees. Therefore, she employs five total permanent employees. In addition, for 11 weeks during the summer of last year she added two temporary employees, bringing her total employees during those weeks to seven. What is her business size for purposes of the Sick and Safe Time Ordinance?

She uses the following calculation:

Forty-one weeks at five employees (41 x 5) equals 205 employee weeks. Eleven weeks with seven employees (11 x 7) equals 77 employee weeks. Added together (77 + 205), they total 282 employee weeks. 287 employee weeks divided by 52 total weeks in a year (287/52) equals a weekly average of approximately five-and-a-half employees. Josie's restaurant has "fewer than six" employees for purposes of the Sick and Safe Time Ordinance. Because she employs fewer than six people, she may choose to provide sick and safe time unpaid.

Scenario (b):

Thirty people work for Purple Star, which is headquartered in Wisconsin. All but two of these employees work at facilities outside of Minneapolis. Because Purple Star employs six or more people – regardless of location – the two employees stationed in Minneapolis must receive sick and safe time hours as paid time.

70.) Q: How do I calculate the number of employees for a *new* employer?

A: To determine business size for an employer that has existed for less than one year, calculate the average number of employees per week during the first 90 days of operation.

Scope of coverage and applicability:

71.) Q: When is an employee covered by the Sick and Safe Time Ordinance?

A: Employees who work at least 80 hours in a benefit year within the geographical boundaries of Minneapolis are covered under the Sick and Safe Time Ordinance, regardless of the location of the employer. Employees who only drive through the city are not covered even though this occurs during an employee's work hours. An employee accrues sick and safe time hours only while physically located within Minneapolis and performing work for the employer.

Find the City of Minneapolis geographical boundaries here:

<http://cityoflakes.maps.arcgis.com/apps/PublicGallery/map.html?appid=4172cd1ed97749a6a4623dd7aa5a246f&webmap=0e9be43abc834e85bc6ad003d9358c76>

Find out if an address is inside or outside of Minneapolis here:

<https://gis.hennepin.us/Property/Map/Default.aspx>

72.) Q: Does an employee bank sick and safe time no matter her location?

A: No. Only an employee who performs work (at least 80 hours in a benefit year) in Minneapolis is covered by the Sick and Safe Time Ordinance. Employers may also restrict an employee's accrual of sick and safe time to the time that the employee performs work within the City of Minneapolis. An employer may voluntarily allow accrual of sick and safe time hours regardless of an employee's geographic location if it chooses. See questions #1, #6 and #69 for more information.

73.) Q: Are employers required to permit the use of sick and safe time hours when an employee is scheduled to perform work outside of Minneapolis?

A: No. An employee has a right to use banked sick and safe time hours for covered purposes only when he is scheduled to perform work within the city limits of Minneapolis. An employer may allow use of sick and safe time hours regardless of where an employee is scheduled to work if it chooses.

74.) Q: How does an employer know how much time an employee spends working within the city limits?

A: An employer may make a reasonable estimate of an employee's time spent working in the city for purposes of sick and safe time eligibility, accrual, and use. Documentation of how the reasonable estimate was derived may include, but is not limited to, dispatch logs, delivery addresses and standard estimated travel times, or historical averages. Smart phone apps also exist for the purpose of GPS location and payroll time tracking.

75.) Q: Are nonprofit employers covered under the Sick and Safe Time Ordinance?

A: Yes.

76.) Q: Is the construction industry exempt?

A: No. However, employers in the construction industry may comply with the Sick and Safe Time Ordinance by paying employees or registered apprentices the applicable prevailing wage rate as calculated by the Minnesota Department of Labor and Industry. Visit <http://www.dli.mn.gov/ls/prevwage.asp> for more information.

77.) Q: Are employees covered by the terms of a collective bargaining agreements exempt?

A: No. Employers operating under a collective bargaining agreement (CBA) must meet at least the minimum requirements of the ordinance. Employers that do not meet the minimum requirements as of July 1, 2017 are in violation of the ordinance.

The MDCR recognizes that employers operating under a CBA that does not meet the minimum requirements of the ordinance on July 1, 2017 may seek an amendment or supplemental agreement with a labor organization to their CBA. Letters of agreement or memoranda of understanding are often used for such purposes, at the discretion of the employer and union.

Employers operating under a CBA that does not meet the minimum requirements of the ordinance on July 1, 2017 may use the first year of enforcement, until July 1, 2018, to make necessary changes or new agreements. This does not constitute a legal exemption. Rather, it is more accurately described as a grace period from enforcement action during which the Department of Civil Rights will exercise discretion, provided the employer is negotiating with a labor union in good faith.

A checklist of Sick and Safe Time Ordinance requirements is available at <http://www.minneapolismn.gov/www/groups/public/@citycoordinator/documents/webcontent/wcmsp-187583.pdf>.

78.) Q: If an employer contracts with a temporary staffing agency or other type of joint employer, which entity is responsible under the Sick and Safe Time Ordinance to meet the sick and safe time obligations to employees?

A: More than one entity may be considered an employee’s “employer” under the Sick and Safe Time Ordinance and, if so, each has an independent obligation to ensure that the ordinance requirements are met. These “joint employers,” may include a staffing agency or professional employer organization and a client, for example. Joint employers may agree between them which will monitor their collective compliance with the ordinance. However, any such assignment of responsibility does not affect the rights of employees under the ordinance. An employee is not entitled to duplicative sick and safe time from each “joint employer.”

Note: Joint employers may exist where more than one person or entity directly or indirectly or through an agent or any other person or entity, including through the services of a temporary service or staffing agency or similar entity, employs or exercises control over the wages, hours, or working conditions of an employee. The duration of the work, control over work or working conditions, location of work, and repetitive and rote nature of work may indicate to the MDCR the existence of a joint employment relationship within the meaning of the Sick and Safe Time Ordinance.

Scenario:

An employee has worked for various businesses through a temporary staffing agency and has accrued 32 hours of sick and safe time. However, the employee has only worked for one week at her current assignment. Is the employee entitled to use paid sick and safe time?

The temporary staffing agency has the responsibility for providing sick and safe time in this scenario since the employee has worked for it for more than 90 days and accrued paid sick leave. The business has no obligation to pay the employee sick leave because the employee has not worked for it for at least 90 days and accrued paid sick leave in that assignment.

79.) Q: When one employee works at different jobs for separate, unrelated employers, does each employer have to provide sick and safe time?

A: Yes. Each employment relationship creates rights and responsibilities under the Sick and Safe Time Ordinance.

80.) Q: Does the Sick and Safe Time Ordinance require employers to provide sick and safe time to independent contractors?

A: No. However, merely labeling someone as an "independent contractor" does not necessarily relieve the employer of its sick and safe time obligations. Consistent with Minnesota law, whether a person is an employee or independent contractor is determined by a variety of facts including the extent to which the independent contractor retains supervision, direction, and control over the work and the means to complete it.

For more information on how the State of Minnesota similarly reviews issues relating to independent contractor status, visit the Minnesota Department of Labor and Industry webpage at <http://www.dli.mn.gov/WC/IndpCont.asp>.

81.) Q: Does the Sick and Safe Time Ordinance cover employees regardless of their immigration status?

A: Yes. All employees who work in Minneapolis – no matter their status under federal immigration law – have legal rights under the Minneapolis Sick and Safe Time Ordinance. The Minneapolis Department of Civil Rights will process an employee's report of suspected violation without regard to his or her immigration status. An employee filing a report will not be questioned about his or her immigration status.

82.) Q: Do employees who leave and return (seasonal, rehires, etc.) get to keep their accrued sick and safe time hours?

A: If an employee is rehired within 90 days after separation, the employer must reinstate (and allow immediate use of) previously accrued and unused sick and safe time hours, unless the employer paid the employee for unused sick and safe time hours at the time of initial separation. If the employee's break in employment is more than 90 days, the Sick and Safe Time Ordinance does not require the employer to reinstate accrued and unused sick and safe time hours.

83.) Q: If a covered business is transferred to another employer, what happens to an employee's banked sick and safe time hours?

A: If an employee remains employed with the new employer, the employee retains banked sick and safe time hours. This new employer must allow its employees to use the banked sick and safe time hours.

84.) Q: If an employee is transferred to another division or location of the same employer, is the employee entitled to sick and safe time hours that were banked at the previous location?

A: Yes. The employee gets to keep these hours and may use all banked sick and safe time hours when performing work within the city limits of Minneapolis.

85.) Q: How can employees and employers confirm whether or how the law applies to them?

A: Employers and employees can contact the City of Minneapolis Department of Civil Rights, Labor Standards Enforcement Division in the following ways:

- Email sicktimeinfo@minneapolismn.gov
- Call 311 and ask for information about the Sick and Safe Time Ordinance
- Walk in to the Minneapolis Department of Civil Rights at 350 S. Fifth St., Room 239

Enforcing the Sick and Safe Time Ordinance:

86.) Q: How will the Sick and Safe Time Ordinance be enforced?

A: Enforcement of the Sick and Safe Time Ordinance is the responsibility of the director of the Minneapolis Department of Civil Rights (“Department”). Enforcement is complaint based; however, the Department also has broad authority to proactively investigate possible violations and issue fines as necessary to gain compliance.

As in other types of labor law enforcement, compliance reviews and investigations may be utilized to identify all affected employees and protect the anonymity of complainants. Administrative fines will be imposed to make employees whole. Repeat or intentional violators will receive harsher penalties.

Violations of the Sick and Safe Time Ordinance may also result in license sanctions, up to and including revocation of a business license by the City of Minneapolis. All legal options and penalties to gain compliance, including enforcement in a court of law, will be considered.

Scenario:

An employer has a policy or practice of not providing or refusing to allow the use of sick leave. How would this be remedied by the Department? The finding that an employer has such a policy or practice constitutes a violation of the law for each and every employee affected by the policy.

87.) Q: What happens if an employer’s written policies include sick and safe time off work but, in practice, the employer’s actions dissuade employees from using it?

A: Retaliation against an employee for exercising or attempting to exercise any rights available to her under the Sick and Safe Time Ordinance is strictly prohibited. Retaliation is any act that would dissuade a reasonable employee's use of sick and safe time. Material changes in job classification, duties or hours, formal disciplinary action such as documented warnings or suspension, the accumulation of points under an attendance point system, or employment termination may be considered retaliatory. Aggressive enforcement to protect employees' rights will be pursued by the MDCR in these types of cases.

88.) Q: What may an employer do in cases of suspected misuse?

A: In cases of suspected sick and safe time misuse, an employer may review future use with heightened scrutiny. An employee who uses sick and safe time hours for purposes other than those authorized under the Sick and Safe Time Ordinance is not protected by the ordinance.

89.) Q: May an employer discipline an employee who misuses sick and safe time?

A: Yes. An employee who uses sick and safe time hours for purposes other than those authorized under the Sick and Safe Time Ordinance is not protected by the ordinance.

90.) Q: An employer has an absence control policy that issues an "occurrence point" for each absence, including sick and safe time absences. Is that allowed?

A: No. Employers are allowed to have absence-control or discipline policies, but may not count sick and safe time absences negatively within those policies. Additionally, an employer may not take an employee's legitimate sick and safe time use into account when rating that employee's attendance record for the purposes of awarding a benefit, such as a raise, premium or bonus. Such actions would constitute unlawful retaliation.