

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. The answers below are not legal advice nor legal precedent.

NOTE: Other laws and regulations, including state and federal law, may apply. These additional laws and regulations may impact the rights and obligations of employers and employees with respect to sick and safe time. If you have additional questions about the Minneapolis Sick and Safe Ordinance, you should consult with an attorney.

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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, Article III](#). Employees may have additional rights under other local, state or federal 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](#).

Contents:

1-5	General information
6-14	Basic requirements
15-18	Carryover and caps
19-23	Front-loading of hours
24-33	Use of sick and safe time
34-36	Paid Time Off plans
37-40	Record-keeping and notice requirements
40-54	Usage monitoring and restrictions
55-61	Rate of pay for sick and safe time hours
62-69	Scope of coverage and applicability
70-74	Enforcing the Sick and Safe Time Ordinance

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 nearly all employees – including full-time, part-time, and temporary employees or paid interns – working in Minneapolis. Note that for purposes of the Minneapolis Sick and Safe Time Ordinance, an independent contractor is *not* considered an employee.

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

A: The ordinance is intended to allow employees to care for themselves and others, 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. Ensuring that workers have access to paid leave fosters a more productive, safer, and healthier community for all.

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

A: The Minneapolis Sick and Safe Time Ordinance took 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 hours, they accrue 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 they start working. An employee begins to accrue sick and safe time beginning on their first day of work.

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 1 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 hour of sick and safe time.

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.

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: What happens to an employee’s accrued sick and safe time hours at the end of the benefit year?

A: Employers have two options for handling their employees’ accrued sick and safe time hours at the end of a benefit year. Employers can either (a) allow their employees to carry over their accrued hours into the new benefit year, or (b) frontload them for the new benefit year.

For Option (a), when an employer allows an employee to “carry over” their hours into a new benefit year, the total amount of accrued but unused sick and safe time for an employee may not exceed eighty (80) hours at any time, unless an employer agrees to a higher amount.

For Option (b), an employer must provide at least 48 hours for the employee’s immediate use at the beginning of the new benefit year *if the employer pays the employee for their accrued but unused sick and safe time from the previous year (at the same base rate as the employee earns from regular employment)*, or at least 80 hours for the employee’s immediate use at the beginning of the new benefit year if the employer does *not* pay an employee for accrued but unused sick and safe time from the previous year.

16.) 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:

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>.

- 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 uses to measure the benefit year, it must be clearly communicated to all employees and applied equally for all employees. Employers must use a consistent measuring period from year to year and from employee to employee.

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

A: Employers may set a cap or limit on each employee's sick and safe time accrual. Employers must allow each employee to accrue at least 48 sick and safe time hours in a given year. When sick and safe time accrual is carried over from year to year, employers must allow their employees to accrue at least 80 sick and safe time hours total. These limits of 48 hours each year and a maximum accrual of 80 hours for each employee may be higher if an employer agrees, but not lower. Note that an employer can opt to frontload their employees' sick and safe time hours at the beginning of the year instead of using the standard accrual method. See Question #15 for more information.

18.) 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 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. Note that these 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).

Front-loading of hours:

19.) Q: What is “front-loading”?

A: Front-loading is an alternative method of accrual for employers who want to reduce calculations 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. Note, in lieu of permitting the carryover of accrued but unused sick and safe time hours, employers may front-load 48 hours for the following year if the employer pays employees for accrued but unused sick and safe time at the end of the current year. Alternatively, employers may front-load 80 hours for the following year if the employer does not pay an employee for accrued but unused sick and safe time at the end of the year.

20.) 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.

At the beginning of each subsequent benefit year, in lieu of permitting the carryover of accrued but unused sick and safe time, an employer must either: (a) front-load the employee at least 80 hours for the subsequent year or (b) front-load the employee at least 48 hours for the subsequent year and pay them for any accrued but unused sick and safe time hours from the current year.

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.

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

A: Yes.

22.) 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 with the minimum requirements under the ordinance, an employer may front-load sick and safe time for some but not others. (Warning: Compliance with the Sick and Safe Time Ordinance does not guarantee compliance with other civil rights protections or applicable laws.)

23.) 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 the required number of hours are given.

Use of sick and safe time:

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

A: No. An employee begins to accrue sick and safe time immediately and may use their time as it accrues.

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

A: An employee may use their accrued sick and safe time hours to care for their own health or the health of a family member, or to get medical, legal, or victim services assistance related to domestic violence, sexual harassment, or stalking that affects themselves or a family member.

Additionally, an employee may use their accrued sick and safe time for the following reasons:

- 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.
- 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.
- 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.
- To accommodate the employee's need to care for a family member whose school or place of care has been closed due to inclement weather, loss of power, loss of heating, loss of water, or other unexpected closure.

26.) Q: Who is considered a family member?

A: Family member includes the employee's (or their spouse's or registered domestic partner's) child, step-child, adopted child, foster child, adult child, child for whom the employee is legal guardian, spouse, sibling, stepsibling, foster sibling, parent, step-parent, foster parent, mother-

in-law, father-in-law, grandchild, foster grandchild, stepgrandchild, grandparent, stepgrandparent, child of a sibling, sibling of the parents of employee, child-in-law, sibling-in-law, guardian, ward, members of the employee's household, registered domestic partner, any other individual related by blood or whose close association with the employee is the equivalent of a family relationship, and up to one individual annually designated by the employee.

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

A: Employees may use accrued sick and safe time to care for of a family member for the same reasons an employee may use accrued sick and safe time for themselves. 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

28.) 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

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

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

30.) 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 they give 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.

31.) 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.

32.) 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>.

33.) 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 accrued 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. Note, an employer may require notice (if foreseeable) and/or reasonable documentation for an extended use of earned sick and safe time.

Paid Time Off and vacation plans:

34.) 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.

35.) 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 30 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.

36.) 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 sick and safe time?

A: Yes. Employers must retain accurate records of earned sick and safe time both accrued and used by employees.

Record-keeping and notice requirements:

37.) Q: What sick and safe time 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. Note that employers likely have additional recordkeeping obligations under law aside from those related to sick and safe time.

38.) 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, at each location in Minneapolis where work is performed, in a conspicuous and accessible location. The poster should be displayed where employees can easily read it. Employers must display the poster at each work location in English and in any language(s) spoken by at least 5% of the employees that is published on the department website. 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>.

39.) 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:

40.) 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.

Note that an employer that requires notice of the need to use earned sick and safe time shall have a written policy containing reasonable procedures for employees to provide notice of the need to use earned sick and safe time, and shall provide a written copy of such policy to employees. If a copy of the written policy has not been provided to an employee, an employer shall not deny the use of earned sick and safe time to the employee on that basis.

41.) 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.

Note that an employer that requires notice of the need to use earned sick and safe time shall have a written policy containing reasonable procedures for employees to provide notice of the need to use earned sick and safe time, and shall provide a written copy of such policy to employees. If a copy of the written policy has not been provided to an employee, an employer shall not deny the use of earned sick and safe time to the employee on that basis.

42.) 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.

43.) 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. 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.

Note that employees must follow any required notice procedure established by the employer which has been provided to employees in written form.

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

A: 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).

45.) 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.

46.) 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 reasonable documentation unless:

- Clear evidence of misuse exists (for explanation and examples, see question #47); 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). Note that 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.

47.) 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 their 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.

48.) 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 they used sick and safe time hours for a permissible purpose.
- Request reasonable documentation if an employee uses sick and safe time for more than three consecutive days. See question #46 above for examples of reasonable documentation.
- Ask for a date on which the employee will return.

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

A: An employee may use sick and safe time in the smallest increment of time tracked by the employer's payroll system, provided such increment is not more than four hours.

50.) 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.

51.) 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.

52.) 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.

53.) 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.

54.) 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:

55.) 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).

56.) 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.

57.) 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.

58.) 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.

59.) 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.

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

A: No. Employers cannot waive their sick and safe time obligations or use compensation in lieu of providing sick and safe time.

61.) 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 pay out unused sick and safe time hours at the time the employment relationship is terminated. However, employers may choose to do so.

Scope of coverage and applicability:

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

A: Yes.

63.) 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.

64.) 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>.

65.) 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.

66.) 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 180 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. An employee is entitled to use accrued earned sick and safe time and accrue additional earned sick and safe time at the commencement of reemployment.

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

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

68.) 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 accrued at the previous location?

A: Yes.

69.) Q: How can employers and employees get more information?

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 into the Minneapolis Department of Civil Rights at 350 S. Fifth St., Room 239

Enforcing the Sick and Safe Time Ordinance:

70.) 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.

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.

71.) 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 Department in these types of cases.

72.) 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.

73.) 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.

74.) 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. This would constitute unlawful

retaliation. 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 also constitute unlawful retaliation.