

Subject: PROPOSED Enforcement Guidance on the Minneapolis Sick and Safe Time Ordinance

Purpose: The City of Minneapolis Department of Civil Rights (MDCR) submits for public comment its proposed guidance on general rights and responsibilities of employers and employees and related issues pursuant to Minneapolis Code of Ordinances Title 2, Chapter 40. This document is intended to provide the public with information about how MDCR may guide its personnel in processing and investigating charges and interpreting the Minneapolis Sick and Safe Time Ordinance.

Public Comment Period: March 15, 2017 through May 1, 2017

EFFECTIVE DATE: Ordinance takes effect July 1, 2017

NOTE: In a lawsuit brought against the City of Minneapolis in the case of Minnesota Chamber of Commerce et al v. City of Minneapolis, Court File No. 27-cv-16-15051, the Hennepin County District Court issued a temporary injunction prohibiting the City of Minneapolis from enforcing the Sick and Safe Time Ordinance against any “employer resident outside the geographic boundaries of the City.” This case is currently on appeal to the Minnesota Court of Appeals. As a consequence, the Ordinance will not be enforced against any employer resident outside the City of Minneapolis until the order is modified or rescinded.

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 five or fewer 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 #26).

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.

Scenario:

Julian has worked 120 hours. How many sick and safe time hours has he banked? Julian has banked four sick and safe time hours. After 150 hours worked, he will bank 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 accrue 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 #22 and #24 for more information about alternative accrual methods and scenarios.

11.) Q: Must an employer allow accrual when an employee is on vacation or out sick?

A: No. Sick and safe time does not 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 worked.

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/ls/OtExempt.asp> and <https://www.dol.gov/compliance/guide/minwage.htm>.

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 of sick and safe time do not automatically 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).

Scenario:

Employee Anthony accrued 30 sick and safe time hours by the end of the first benefit year of his employment. His employer must carry-over these 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. A consistent measuring period from year to year and from employee to employee is required.

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 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 Inc. limits its employees' accrual of sick and safe time at 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.

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 an employer's 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 triggered) until they use some of the hours they have "in the bank." These limits of 48 hours per benefit year and a maximum accrual cap of 80 hours 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: Does the Sick and Safe Time Ordinance require employers to provide 48 hours of sick and safe time to every employee, every year?

A: Not necessarily. An employee accrues the equivalent of at least one hour of sick and safe time for every 30 hours worked. The minimum required number of hours of sick and safe time that an employee accrues depends upon how many hours she works and whether she has reached employer-set limits of 48 hours per benefit year or 80 hours overall, including accrual and carryover.

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: In an employee’s first year of employment, an employer who chooses this option must front-load that employee at least 48 hours. Automatically at the beginning of each subsequent benefit year, the employer must front-load the employee at least 80 hours. This amount of front-loading on a yearly basis fulfills the accrual and carryover requirements.

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 frontloaded 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: Can an employer front-load yearly sick and safe time hours for part-time employees?

A: Yes. However, to avoid accrual or carryover calculations, an employer must front-load an employee at least 80 hours (or 48 hours for the first year of employment) at the beginning of every year.

24.) 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 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).

25.) 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 #24 and #25 above.

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 (80 hour per week) employee Aamina has completed 1440 hours worked in Minneapolis. Aamina has thus banked at least 48 (1440/30) hours of sick and safe time, recorded at least monthly. May Aamina's employer have awarded sick and safe time in whole hour increments in advance of hours worked? Yes. Aamina's employer may have chosen to record six hours per month for eight months or three hours bi-weekly (or twice-per-month) for eight months until reaching a yearly limit of 48 hours.

Use of sick and safe time:

26.) 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.

27.) 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.

28.) 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

29.) 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
- Participating in a legal proceeding

30.) 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

31.) Q: What is “preventive care”?

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

For more examples of preventive care visit HealthCare.gov: <https://www.healthcare.gov/what-are-my-preventive-care-benefits/>.

32.) 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.

33.) 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.

34.) 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 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>.

35.) 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 #24 and #25). May her employer impose restrictions on amounts of legitimate use? 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.

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 plans:

36.) Q: What is a Paid Time Off plan?

A: Paid Time Off (PTO) generally refers to a package that combines vacation and sick time into one bank of accrued paid time off of work that employees can use for any purpose. For example, an employee can use PTO for personal reasons, vacation or illness.

37.) Q: If an employer offers a Paid Time Off (PTO) plan, does that satisfy the requirements of the Ordinance?

A: A PTO plan can satisfy the Sick and Safe Time Ordinance requirements *if* the plan allows employees: (1) at least as much time as required by the ordinance; and (2) to use the time off for all of the reasons and under the same conditions required by the Ordinance. Some PTO plans and procedures may need changes to fulfill the baseline requirements set by the Sick and Safe Time Ordinance.

A checklist of Sick and Safe Time Ordinance requirements is available at <http://www.minneapolismn.gov/www/groups/public/@citycoordinator/documents/webcontent/wcmssp-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. See the frequently asked questions sections entitled “reasons for use” and “conditions of use” 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 at least equal to 1 hour per thirty hours worked, the employer is not required to offer additional leave. However, it may choose to do so.

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.

Record-keeping and notice requirements:

39.) 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 for sick and safe time purposes.

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.

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

A: 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 here:

<http://www.ci.minneapolis.mn.us/www/groups/public/@citycoordinator/documents/webcontent/wcmssp-187584.pdf>.

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

A: Employers may choose any method for providing this information, including on pay stubs or electronically. Employers must provide this information upon request.

Usage monitoring and restrictions:

42.) 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.

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. 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 Little Enterprise and employs Bernice. Little 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 Little 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: 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.

45.) 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).

46.) 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.

47.) 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.

48.) Q: May an employer impose a minimum length of time per use?

A: Yes. The Sick and Safe Time Ordinance allows an employer to set a minimum-amount-of-use-per-day of sick and safe time up to 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.

49.) 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.

50.) 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.

51.) 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.

52.) 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.

53.) Q: If, within 24 hours of a shift start, an employee calls in and requests that shift, may the employee use sick and safe time?

A: No. If an employee chooses to call in and request a shift occurring within twenty-four (24) hours, 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:

Anthony's employer offers him an extra shift to cover for a co-worker. Anthony accepts. Anthony is now scheduled to work. Anthony's daughter then becomes ill and must stay home from school. May Anthony use sick and safe time hours to care for his daughter? Yes.

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

A: An employer cannot link approval or compensation to the employee providing documentation from a third party such as a medical professional, unless there is clear evidence of misuse or the employee's absence is more than three consecutive workdays.

Scenario:

Employee Alicia has now been out of work four consecutive days 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.

55.) 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.

Where applicable, 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, where applicable, 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 days. 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.

56.) 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:

57.) 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).

58.) 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?

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.

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

A: For an employee who is paid an annual salary and is exempt from overtime laws, as provided under the Fair Labor Standards Act and/or Minnesota wage and hour laws, her hourly rate can be determined by dividing her annual salary by the approximate number of hours she works per year. One full-time work year is commonly defined as 2080 hours.

60.) 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.

61.) Q: If an employee's rate of pay fluctuates for the same job, what should the rate of pay be for sick and safe time hours used?

A: If rate of pay fluctuates for the same job/shift, calculate an average or typical hourly rate based on the employee's recent earnings history.

62.) 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.

63.) 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.

64.) 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 #24 and #25 for more information about front-loading.

65.) 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:

66.) Q: How does an employer determine whether it has six or more employees?

A: Employers with 5 or fewer employees must provide sick and safe time, but they may choose to provide it unpaid. Business size is based upon the average number of employees per week during the previous benefit year. Employers may define the start and end dates of the benefit year according to their own regular business practices so long as it is predetermined and consistent from year to year.

67.) Q: Which employees are included in a business size calculation to determine whether an employer has six or more employees?

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. She defines a benefit year as beginning every Jan. 1. 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.

Does the Sick and Safe Time Ordinance require her to provide time off paid or unpaid? The answer depends upon the number of people she employs. 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. 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.

68.) 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:

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

A: Employees who typically work at least 80 hours in a benefit year within the geographical boundaries of Minneapolis are covered under the Sick and Safe Time Ordinance. 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://www.minneapolismn.gov/www/groups/public/@bis/documents/maps/convert_255931.pdf

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

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

70.) 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.

71.) 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.

72.) 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.

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

A: Yes.

74.) Q: Is the construction industry exempt?

A: No. However, construction industry employees or registered apprentices are not covered under the Sick and Safe Time Ordinance when paid 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.

75.) Q: Are collective bargaining agreements exempt?

A: No. Collective bargaining agreements that do not provide employees with the minimum amounts and conditions of use for time off work required by the Sick and Safe Time Ordinance are expected to be amended. Letters of agreement or memoranda of understanding are often used for such purposes. Employers may use the first year of enforcement, until July 1, 2018, to make any necessary changes or negotiate additional written agreements.

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

76.) 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," such as a staffing agency or professional employer organization and their clients, 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. The economic dependence of an employee on her respective employer(s) triggers the existence of an employment relationship and all its legal responsibilities.

77.) 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.

78.) 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 make it so. 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 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>.

79.) Q: Does the Sick and Safe Time Ordinance cover undocumented employees?

A: Yes. All employees who work in Minneapolis- whether or not they are legally authorized to work in the United States – are covered 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.

80.) 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.

81.) 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.

82.) 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.

83.) 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:

84.) 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.

85.) 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 creates a “chilling effect” on an employee’s use of sick and safe time. Material changes in job duties or hours, formal disciplinary action such as documented warnings, 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.

86.) 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.

87.) 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.

88.) Q: What are some examples of misuse by an employee?

A: Examples of clear evidence of sick and safe time misuse 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 or (b) evidence that an employee 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.

89.) Q: An employer has an absence control policy that issues an “occurrence point” for each absence. Is that allowed?

A: 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 cannot 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.