

Earned Sick and Safe Time Task Force Recommendations

Executive Summary

History

The Task Force was created by a Duluth City Council resolution “for the purpose of gathering information, collecting public input, proposing the best options for implementing ESST policies and bringing forward policy recommendations.” The Task Force studied and followed what other communities – cities, counties and states – around the country are already doing regarding this issue. (Exhibit 1) The Task Force followed litigation surrounding these ordinances, especially in Minnesota.

The Task Force surveyed Duluthians regarding their positions on earned sick and safe time (Exhibits 2 & 3) through online surveys. Separate surveys were created for employees and employers.

We received 449 surveys responding to the employee survey. Thirty-four percent of those who responded did not have access to paid sick leave. Forty-seven percent of those who responded did not have access to paid safe time at work. Thirty-nine percent of those who participated feared repercussions for taking time off. The largest industry represented in the employee surveys was non-profits.

We received 143 responses to the employer online survey. Of those who responded, 90% indicated that they offered some type of earned paid time off. The largest industry represented in the survey responses was hospitality.

In the Spring 2017, the Task Force held nine listening sessions throughout the City. One hundred twenty-nine people attended: 80 spoke in favor of ESST, 13 had concerns or were against it and 36 listened but did not participate. (Exhibit 4) Both employers and employees voiced concerns about speaking publicly for fear of retribution.

The Task Force heard from employees who had been forced to choose between working sick (and infecting co-workers, restaurant patrons and patients) and losing pay, having older children in the family stay home from school with younger sick children so the parent didn't lose pay from work, and those who were unable to be by their child's hospital bedside to avoid losing their job.

The Task Force also heard from several employers. Many employers voiced concerns about the expense involved in offering such benefits. Some employers brought in financial analyses of the impact on their business based on the Minneapolis ordinance. Other employers who already provide such benefits provided feedback on how it worked for them – including the cost associated with their benefits. There was concern about a one-size-fits-all ordinance given that it may impact smaller businesses and those with smaller margins differently.

In June 2017, in accordance with the resolution creating the Task Force, the ESST Task Force presented the City Council with options that could be considered as part of an ordinance. (Exhibit 5) Following the report to the City Council, the Task Force created another online survey to obtain feedback on the options. (Exhibits 6 and 6A) A total of 262 responses were received. Of those who responded, 33% favored an ordinance requiring employers provide a full policy; 10% favored an ordinance creating a basic policy; 33% favored no ordinance; and 24.6% favored an ordinance that encouraged employers to adopt

an ESST policy. The hospitality industry was the most represented in the survey participants, with healthcare being the second largest industry represented.

The Task Force then held an additional three listening sessions. Again, about 126 people attended and participated. Forty-four of those who signed in identified as representing an employer and 57 identified as employees. The remaining attendees did not identify as either. Fifty-five people spoke: 36 spoke in favor of the ordinance and 19 spoke against an ordinance or in favor of voluntary compliance. (Exhibit 7)

The Task Force was made up of many different constituencies. All discussions were civil and we are proud of the process undertaken. As a matter of transparency, after the executive summary we have provided the votes and notes of issues discussed during the creating of the recommendations.

Executive Summary Recommendations

The Task Force was directed to present the City Council with recommendations regarding an ordinance. Because the Task Force saw this directive as a requirement to present more than one option, we conducted our deliberations in such a way as to present more than one option. It is then for the City Council to decide whether and how an ordinance may be enacted.

The Task Force has prepared two options based upon our research, community input and discussions. There are many places in the two options where the contents are identical. Overall, the Task Force recommends that an ordinance be enacted requiring employers with more than five employees in Duluth provide earned sick and safe leave to all employees.

Considerations

In creating recommendations, the Task Force identified several issues that we urge the City Council to consider as they move forward. First, given budget constraints we suggest that the cost of enforcement mechanisms be considered as part of the decision of drafting any ordinance.

The Task Force also suggests consideration be given during the first year of enforcement after an ordinance to providing support first to employers rather than just penalties. The Task Force did not address what penalties would be appropriate.

Provisions Contained in Both Options

- All employers with a physical location in the City of Duluth with five or more employees covered.
- Cover all full time and part time employees (including casual, paid interns, domestic workers, temporary workers, etc.).
- Earned sick and safe time should be available for employees to use for themselves, spouses, children (including adult children), siblings, mothers-in-law, fathers-in-law, grandparents, grandchildren and step-parents. This follows existing state law. Minn. Stat. 181. 9413(a.)
- Complaint-based enforcement and a private right of action.
- City Council to determine what entity to enforce the ordinance.
- No additional documentation for leave beyond what may be required by existing state and federal law.

- Employers who already provide substantially similar earned sick and safe time would be exempt from compliance with the ordinance. The definition of “substantially similar” will need to be determined by the City Attorney.
- Any ordinance would not go into effect for a period of 18 months, allowing employers time to update their policies and systems.

Task Force Recommendation

The Task Force recommends that the City Council pass an ordinance requiring employers to create a full earned sick and safe time policy with the following details in addition to the shared provisions above:

- The majority of Task Force members recommend that workers start to earn leave upon hire and can use ESST either immediately upon earning or 30 days after hire.
- Earned sick and safe time would be earned at a rate of at least one hour for every 30 hours worked.
- While the majority of the Task Force thought that there should be some way for employees to rollover unused ESST to the following year, there was no consensus on how much the rollover should be or whether additional time could be banked beyond a one-time rollover. Also, there was no consensus in whether there should be a cap on how much ESST an employee could use in a year if they rollover additional leave (e.g. if an employee has 80 hours available due to rollover is there a limit on how much ESST can be used in a year?).

Second Option

Some Task Force members sought to create a second option from a full policy. The concept was to create an ordinance that mandates a basic policy leaving more to the discretion of the employer. The mandated policy would include the shared items noted above, as well as the following:

- Employer would be required to have a written policy publicly available providing that employees can earn sick and safe leave of at least three days annually for full time employees, pro-rated for part time employees.

Breakdown of Task Force Deliberations

The Task Force used the final survey as a guide in crafting its recommendations. Below are the results, and any comments, from those questions. Note that where second choice votes were taken, not everyone voted for a second choice when they felt strongly for their first choice. The discussions also led to other areas that weren't covered specifically by the survey. Those issues are also addressed below.

1. What type of policy should the City adopt?

	No Ordinance	Voluntary	Basic Policy	Full Policy
Top Choice:	0	3	0	8
2 nd Choice:	0	0	6	0

Notes: The Task Force was given the option of voting for their top choice and their 2nd choice.

2. Which employees should be covered by an ordinance?

- a. All employees
- b. Select all that apply:
 - i. Full time - 10 votes
 - ii. Part time - 6 votes for all part time, 3 votes for part time defined as over 30 hours per week
 - iii. Seasonal - 4 votes
 - iv. Temporary - 5 votes
 - v. Intern (see below) - 5 votes
 - vi. Domestic Workers - 4 votes
 - vii. Casual Workers - 6 votes
 - viii. Those covered by collective bargaining agreements - 6 votes
 - ix. Student Workers - 5 votes
 - x. Other _____

Notes: The Task Force determined that independent contractors (businesses where the owner was the only employee) should not be covered by any ordinance. As for other definitions, interns refers to those who are paid. A full-time employee would be as the business or other law defines full time (e.g. some employers consider 37.5 hours full time, other 40 hours etc.). If a member voted for all part time employees they did not vote for other definitions.

3. Which employers should be covered by the ordinance?

	1 st Choice	2 nd Choice
a. All Employers	3	1
b. Select one of the following:		
i. Based on size of employer		
1. 5 or more employees	4	5
2. 10 or more employees	1	2
3. 30 or more employees	1	1
4. 50 or more employees	2	1
ii. Revenue Model (formula of profitability per employee)		received no votes

Notes: At the beginning of the Task Force process, the Task Force determined it would recommend that only employers with a physical location in Duluth would be subject to any ordinance. This is a direct result of litigation in Minneapolis over attempts to cover sales people and other employees who are more transient in the locality.

Several members felt strongly enough about their first choice that they abstained from the second choice.

A question was raised whether any ordinance should cover an employer with only one employee in Duluth. For example, a law office may have a satellite office in Duluth which only has one person in it.

The survey asked whether government employees should be covered by any ordinance. The Task Force defers that question to the City Attorney as it may implicate legal and jurisdictional issues beyond the Task Force's charge.

4. When does an employee begin to earn sick and safe leave?

- a. Date of Hire
- b. 30 days after employment
- c. 1 months after date of hire (173 hours)
- d. 6 months after date of hire
- e. 1 year after date of hire
- f. Other _____

5. When may an employee begin to use sick and safe leave?

- a. Immediately upon earning
- b. 30 days after beginning to earn
- c. 90 days after beginning to earn
- d. 180 days from beginning to earn
- e. Other _____

Notes: The Task Force determined that questions 4 and 5 needed to be addressed in conjunction with each other, and that is how the vote was conducted.

Date of hire/next calendar year - No votes
 After 360 hours/upon earning - No votes
 Date of hire/immediately upon earning - 4 votes
 Date of hire/30 days after earning - 3 votes
 No Requirement for earning sick leave/no requirement for when ESST used - 3 votes
 6 months - 90 days
 30 days 30 days - 1 vote

6. How much leave time earned at what rate?

	1 st Choice	2 nd choice
a. 1 hour for every 30 hours worked	7	
b. 1 hour for every 40 hours worked		
c. 1 hour for every 80 hours worked		1
d. Tiered system where size of business would determine how much earned at what rate.	1	5
e. No requirement	3	

Notes: Many members did not vote for a second choice as they felt strongly about their first choice. The tiered system discussed was to address concerns for smaller employers. For example, a larger employer may have a faster rate of earning than a smaller employer.

7. Is there an annual minimum earning of sick and safe leave?

Notes: As we reviewed the questions, we determined that this question was addressed elsewhere.

8. Would employee's rollover sick and safe leave hours into the new year?

	First Choice	Second Choice
a. No rollover	3	
b. 24-hour rollover	2	1
c. 40-hour rollover	2	
d. 80-hour rollover		
e. Rollover increases with longevity	1	2
f. Amount earned previous year	1	1

9. If hours rollover, would there be a limit on annual usage?

	First Choice	Second Choice
a. No cap	1	1
b. 24 hour cap		
c. 40 hour cap	1	
d. 80 hour cap	1	1
e. Employer determined	3	
f. Amount earned in a year	3	1

Notes: We view this as a floor, not a maximum. Employers could certainly provide a higher limit or no limit on usage as an additional benefit.

Extra Q: If hours rollover, would there be a cap on how much can accrue (bank) over time?

Notes: During discussions the Task Force realized that people could rollover time from one year to the next, but if they still didn't use all of their time (or they were capped from using it) the rollovers could continue to accrue -- or bank -- over many years. We ultimately decided that this was more appropriately handled by the employer.

10. What enforcement mechanism should be used?

a. Complaint based	8
b. Education and incentive based	3
c. Annual reporting with audit	

Notes: This was a topic of great discussion. The costs associated with any enforcement mechanism must be considered. The Task Force feels strongly that any ordinance that is passed must have enforcement mechanisms associated with it – there must be accountability.

Several Task Force members were interested in finding a way to publicly rate employers so that the public (and employees) would know if an employer was following the law, provided additional benefits, etc.

11. Who would enforce an ordinance?

- a. A commission
- b. City Attorney’s Civil Division
- c. Administrative Unit within city government
- d. City Contracts out for services

Notes: The Task Force unanimously voted to have the City Council/City attorney designate this with a keen eye to the costs associated with enforcement.

The Task Force also discussed whether partnerships with organizations/agencies such as the WorkForce Center could be a resource for mediating or settling complaints.

12. Should an employer be able to request documentation for leave greater than 3 days?

- a. Yes
- b. No

The Task Force recommends that any documentation be in line with existing laws and regulations. Adding an additional layer of reporting is unnecessary.

Many on the Task Force also felt very strongly that victims of domestic abuse and sexual abuse not be re-traumatized by requiring documentation.

We also discussed that creating a designated safety resource – someone trained to help such victims at each work place would be a way of further addressing these issues in the work place.

Non-Survey Issues Raised During Discussions

Should employers who already have a sick and safe leave policy be exempt from complying with any ordinance?

	First Choice	Second Choice
Yes	1	
No – need definition and additional language to ensure close enough to intent of ordinance	1	
Exempt if substantially equivalent to ordinance	6	2

Definition of who is covered by ordinance:

The Task Force unanimously recommends that the definition used in Minn. Stat. Sec. 181.9413(a) [self, child (including adult child), spouse, sibling, parent, mother-in-law, father-in-law, grandchild, grandparent or stepparent].

If an ordinance is passed, should there be a waiting period to implement (e.g. does it go into effect right away)?

	First Choice	Second Choice
A. No waiting period		
B. 6 months	2	
C. 12 months	3	3
D. 18 months	4	2
E. Tiered based on size of business		2

Notes: The Task Force also recommends that this waiting period be applied to any new businesses as well so that a new employer has time to implement any ordinance.

If an ordinance is passed, should it provide for a private right of action in addition to any other enforcement mechanisms?

Yes 8
No 2
Undecided 1

Appendix

Exhibit 1	Chart of Other Ordinances available at http://www.abetterbalance.org/resources/paid-sick-time-legislative-successes/
Exhibit 2	Employee Survey with results (available on ESST Website)
Exhibit 3	Employer Survey with results (available on ESST Website)
Exhibit 4	Options Presentation to City Council
Exhibit 5	Report to City Council on Public Input Listening Sessions
Exhibit 6	Final Survey with Results (available on ESST website)
Exhibit 6A	Paper Survey Information (some listening session attendees left behind completed surveys; this captures their input)
Exhibit 7	July Listening Sessions By the Numbers