

ESST/PFMLA for MN 2025



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HUMAN RESOURCES EXPERTS

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Salaries in Job Postings



Minn. Stat. 181.173 Subdivision 1

- (b) “**Employer**” means a person or entity that employs **30 or more employees** at one or more sites in Minnesota and includes an individual, corporation, partnership, association, nonprofit organization, group of persons, state, county, town, city, school district, or other governmental subdivision.
- (c) “**Posting**” means **any solicitation** intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings made electronically or via printed hard copy, that includes qualifications for desired applicants.
- (d) “**Salary range**” means the minimum and maximum annual salary or hourly range of compensation, based on the employer’s **good faith estimate**, for a job opportunity of the employer at the time of the posting of an advertisement for such opportunity.



Subdivision 2

- (a) An employer must disclose in each posting for each job opening with the employer the starting salary range, and a **general description of all of the benefits** and other compensation, including but not limited to any health or retirement benefits, to be offered to a hired job applicant.

- (b) An employer that does **not** plan to offer a salary **range** for a position must list a **fixed** pay rate. A salary range **may not be open ended**.



Issues to Resolve

1. What does “range” mean?

Range of salary ER might offer a new hire? (probably)

Range of salary from start to end of 40-year career? (probably not)

But if you would hire an experienced candidate, probably yes.

2. What qualifies as a “general description” of benefits? Probably sufficient to list:

“Medical” not “Medical with employer paying 40% of premiums, \$5,000 out of pocket maximum”



MN Min Wage Update



Minn. Stat. 177.24

- Effective January 1, 2025
- “Small employer” exception removed
- Maximum increase is now 5% rather than 2.5%
 - Statute says MW will increase by the lesser of 5% or an inflation formula
- Statewide MW is \$11.13 as of January 1, 2025
- \$9.08 for EEs under age 20 In 90-day training period



Earned Sick & Safe Time



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Two Different Things

(We'll cover each in detail, this is just simple ways to differentiate)

Earned Sick and Safe Time

Just like sick leave

But now you have to have it

And it has to be paid

By Employer

Administered by Employer

Short term

Minnesota Paid Medical Leave

A lot like Federal FMLA, but paid

Process is a lot like Unemployment

Paid by the State via taxes

Like Unemployment

Administered by the State

Long term

New for 2024/2025: “Hourly Rate” is Now “Base Rate”

Minn. Stat. 181.9445, now effective

“Base rate” means:

- For simple hourly workers, base rate = hourly rate
- For hourly workers with multiple rates, base rate = hourly rate for the time they took off; that is, whatever they would have made if not for ESST.
- For salaried workers, the same rate guaranteed to the employee as if the employee had not taken leave.
- For workers paid on any other basis (commission, piecework, etc.) the highest of the applicable federal, state, or local minimum wage.



Base Rate Does Not Include

- Overtime Premiums
- Shift Differentials
- Weekend/Holiday Premiums
- Bonuses
- Tips



Minnesota Statewide Sick and Safe Time

- Applies to employees who are anticipated to work at least 80 hours a year in MN.
- Allows care for themselves or family member
- Accrues 1 hour per 30 hours worked, up to 48 hours per year
- Accrued but unused is carried over up to 80 hours per year
- Accrual starts first day, can use immediately upon accrual
- Starts January 1, 2024



Alternate Accruals

- More generous plans allowed, but all time is then subject to ESST rules.
- Can front load 48 hours per year if paying for unused at normal hourly rate at the conclusion of each year
- Can front load 80 hours per year and not pay out unused hours at the conclusion of each year.



Family Member Defined

- Adult/Biological/Foster/In-LoCo-Parentis/Legal/Step Children
- Biological/Foster/Step Siblings
- Spouse or Registered Domestic Partners
- Adoptive/Biological/Foster/In-LoCo-Parentis/Step Parents
- Biological/Foster/Step Grandchildren
- Sibling's Children
- Parent's Siblings
- Child-in-Law and Sibling-in-Law



Family Member Defined

- “Any other individual related by blood or whose close association with the employee is the equivalent of a family relationship”
- “Up to one individual annually designated by the employee”



Can Be Used For

- An Employee or Family Member's need for mental or physical illness, injury, or health condition; or need for medical diagnosis, care, or treatment; or need for preventative care.
- Absence due to domestic abuse, stalking, or sexual assault of employee or family member including to receive care, services, legal advice, or relocate



Can Be Used For

- Closure of employee's place of business or family member's place of care or school due to weather or public emergency (some exceptions)
- Inability to work due to illness or seeking diagnosis of communicable illness related to public health emergency
- Quarantine by health authorities having jurisdiction or health care professional



New for 2025: Death and Funeral

Minn. Stat. 181.9447 adds funeral arrangement, funeral attendance, and “to address financial or legal matters that arise after the death of a family member.”

Probate hearings? Prepping house for sale? Lawn Care?



Employers Can Require

- Notice of foreseeable or immediate need to use Sick and Safe Time, if the employer has a written policy with reasonable procedures and has distributed it to all employees
- Documentation after missing three consecutive “scheduled work days” Minn. Stat. 181.9447



Other Rules For Use

- Employers cannot require a replacement worker be found by the absentee employee as a condition of use
- Sick and safe time can be used in the “smallest increment of time tracked.” No more than 4 hours but not less than 15 minutes.



Returning From Leave

- Benefits must continue as if the employee had not been on leave (employee still must pay their premiums)
- Must receive same pay and benefits, plus automatic adjustments, and any seniority accrual that would have happened if not on leave
- Employee can return part time without forfeiting right to return to full time after leave



Minn. Stat. 181.9448 Subd. 2 Termination & Separation

Clarifies that if banked ESST is paid out on termination, the amount paid out is not replenished at rehire.



Employers Must

- Provide notice and posting
- Keep records of leave
- Keep medical information confidential
- Not discriminate or retaliate



Paid Family Medical Leave Act



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PMFLA

- Effective 1/1/26
- ERs must notify EEs NLT 12/1/25



Minn. Stat. 268B.01 Subd. 15 “Covered Employment”

- (a) Performing services of whatever nature performed for wages.
- (b) And
 - (1) 50% or more of employment during calendar year is performed in MN; or
 - (2) EE’s residence is in MN during 50% or more of the calendar year; or
 - ~~(3) EEs employment is controlled and directed from MN. (Removed in 2024)~~
- (c) Does not include:
 - (1) Self employment
 - (2) Independent contractor
 - (3) Seasonal employment as defined in Subd. 35 (on next slide)
- (d) Entities excluded may opt in, under rules to be determined by commissioner. (Added in 2024)



Minn. Stat. 268B.01 Subd. 35 Seasonal Employment

- (a) Employed in **hospitality** for NMT 150 days during a 52 consecutive week period.
Only for ERs who have a 6-month period in which their receipts are 1/3 or less than the other 6 months.
- (b) “hospitality” is defined in 157.15.
- (c) ER must apply to commissioner to classify as seasonal and exempt.
- (d) ER must notify commissioner in 5 business days if EE becomes not seasonal.



Benefits

Workers will receive:

- 90 percent of the portion of their weekly wages that is less than or equal to 50 percent of the state average weekly wage, plus:
- 66 percent of the portion of their weekly wages that is more than 50 percent of the state average weekly wage but less than or equal to 100 percent of the statewide average weekly wage, plus:
- 55 percent of the portion of their weekly wages that is more than 100 percent of the state average weekly wage
- Benefits will be capped at 100 percent of the state average weekly wage. For 2023, 50 percent of the state average would equal \$643.50 per week, and 100 percent would be \$1,287.00 per week.



Minn. Stat. 268B.04 Subd. 5 Maximum Length of Benefits

In a given benefit year:

- (a) For SHC, EE may take the lesser of
 - 12 weeks, or
 - 12 weeks minus time taken in same year for bonding, safety, and exigency plus 8 weeks
 - (b) For bonding, safety, and exigency EE may take the lesser of
 - 12 weeks, or
 - 12 weeks minus time taken for SHC, plus 8 weeks
- So effectively, two 12-week buckets with a 20-week combined cap



Minn. Stat. 268B.04 Subd. 6a

New for 2024: Intermittent leave must be taken in increments consistent with the established policy of the ER for other forms of leave, but no larger than 1 day.



Minn. Stat. 268B.06 Subd 5 Vacation/Sick/PTO

- (a) EE may use vacation, sick pay, or PTO in lieu of benefits
- (b) ER may offer supplemental payments; total payment of statutory benefits + supplement must not exceed EE's usual pay.
- (c) ER may provide wage replacement. If statutory benefits + wage replacement > usual pay, EE must refund either to ER or State.
- (d) If ER paid wage replacement for weeks that should have been paid by State, State may reimburse ER directly.



Minn. Stat. 268B.06 Subd. 7 Separation/Severance/Bonus

- (a) Applicant not eligible for any week that is, has, or will receive separation, bonus, or any other separation payment that is considered wages or subject to payroll withholdings.
- (b) Payments are applied to the first period after separation, regardless of actual payment date.
- (c) Doesn't apply to payout of vacation, sick pay, PTO, etc.
- (d) If payments are less than benefit amount, then benefit amount is reduced.

Statute says nothing about lump sum payments. Severances should be structured to state number of weeks.



Minn. Stat. 268B.09 Subd. 6 Reinstatement

(a) Return to same or equivalent position with equivalent benefits, pay, and other terms; even if EE has been replaced or position restructured.

(b)(1) Defines “equivalent position.”

(b)(2) If EE is no longer qualified due to licensure or training, EE must be given a reasonable opportunity to come current. (Doesn’t say if at work or on own.)

(c)(1) EE comes back with any unconditional pay increases, same shift differential, and opportunity for overtime. If premiums have been changed or eliminated for all EEs, returning EE treated the same.

(c)(2) May deny returning EE incentive bonuses achieved in absence.

(d) Benefits must resume on return.

(d)(2) absence may not count against pension or retirement benefits.



Minn. Stat. 268B.09 Subd. 7 Limitation

Burden is on the employer!

- (1) If laid off, ER's obligations cease.
- (2) If shift eliminated or hours reduced for all, EE returns to reduction.
- (3) If hired for a term, ER's obligations end at end of term.



Minn. Stat. 268B.26 Notice Requirements

- (a) ER must post notice prepared by commissioner.
 - (b) 30 days from employment or 30 days before premium collection, in writing:
 - (1) Explanation of family and medical leave benefits including reinstatement and continuation of health insurance.
 - (2) The amount of premium deductions made by ER
 - (3) The ER's premium amount and obligations
 - (4) Name and mailing address of ER;
 - (5) ID number assigned to ER by the department;
 - (6) Instructions on how to file a claim for family and medical leave benefits;
 - (7) Mailing address, email address and telephone number of the department;
 - (8) Any other information the department requires.
- Continued...



Notice Requirements

- (a) Failure = \$50 per employee for a first violation; \$300 for subsequent.
- (b) May be paper or electronic; if electronic, ER must provide computer to review and print.
- (c) Department will prepare a uniform notice.
- (d) For seasonal EEs, must issue a notice that they are not eligible.



Minn. Stat. 268B.27 Relationship to other leave

Subdivision 1. Concurrent leave. ER may require paid leave under FMLA.

Remember, to start the FMLA clock running, you need to designate it.

Subdivision 2. Construction. Nothing in this chapter shall be construed to: allow an employer to compel an employee to exhaust other leave; (2) prohibit an employer from providing additional benefits; (3) limit collective bargaining; or (4) be applied so as to create any power or duty in conflict with federal law.



Misclassification



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Minn. Stat. 181.722 Subd 1(a)

A person shall not:

- (1) “fail to classify, represent, or treat an employee as an employee[.]” Note that intent is removed.
- (2) “fail” to disclose an employe to any government. Each failure is a separate violation.
- (3) Require or request an employee to complete a document or make an agreement to treat the EE as anything other than an EE.



Minn. Stat. 181.722 Subd 1(b) Individual Liability

“An owner, partner, principal, member, officer, or agent

“who knowingly or repeatedly engaged in any prohibited activities in this subdivision..”

“may be held individually liable.”

So, more than one accidental misclassification = liability as if it was done knowingly.



Minn. Stat. 181.722 Subd 1(c)

Orders are in effect against successor. Successor means having 3 or more of the following:

- (1) One or more of the same owners, members, principals, officers, or managers;
- (2) Performs similar work in Minnesota;
- (3) One or more of the same telephone or fax numbers;
- (4) One or more of the same email addresses or websites;
- (5) Employs or engages substantially* the same individuals to perform or provide services;
- (6) Utilizes substantially* the same vehicles, facilities, or equipment;
- (7) Lists or advertises substantially* the same project experience and portfolio of work.

*not defined in statute



Minn. Stat. 181.722 Subd 4 Damages & Penalties

Used to only apply to construction workers; now applies to everyone

- (a) Damages and penalties may be imposed:
 - (1) Compensatory damages to the misclassified EE including: Wages, Overtime, Shift differential, Vacation, Sick time, Other PTO, Health insurance, Life and disability insurance, Retirement plans, Savings, Any other benefit, Contributions to: Unemployment, SS, Medicare, and any other cost to the EE.
 - (2) A penalty of up to \$10,000 for each EE.
 - (3) A penalty of up to \$10,000 for each failure to report.
 - (4) A penalty of \$1,000 for failing to cooperate with the investigation; with each day being a separate count.



Questions?

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