

MINNEAPOLIS SICK AND SAFE TIME ORDINANCE: WHAT YOU NEED TO KNOW

In May 2016 the City of Minneapolis passed the Sick and Safe Time Ordinance, requiring employers to provide sick and safe time to employees who work within Minneapolis. The Ordinance became effective July 1, 2017.

The Minnesota Recruiting & Staffing Association (MNRSA), along with a coalition of other businesses and association groups, sued the City of Minneapolis. MNRSA and its co-plaintiffs alleged that state law preempts and invalidates the Ordinance. In a May 2018 decision, a Hennepin County district court declined to invalidate the Ordinance but permanently enjoined the City from enforcing the Ordinance against employers not resident within Minneapolis. The City of Minneapolis has appealed the district court's permanent injunction, while MNRSA and its co-plaintiffs have appealed the district court's decision not to invalidate the Ordinance entirely.

While the appeal is pending, the Ordinance and injunction remain in effect. Beginning July 1, 2018, the City will begin assessing fines and penalties if the City determines that a violation has occurred.

The following guide provides basic compliance information. The full text of the Ordinance is available at <http://www.ci.minneapolis.mn.us/government/ord/index.htm>. Rules Implementing the Ordinance, Notice Posters, and FAQs are available at <http://sicktimeinfo.minneapolismn.gov/>

IS MY BUSINESS SUBJECT TO THE ORDINANCE?

Any employer that (1) has a physical location within the boundaries of the City of Minneapolis and that (2) employs employees who work within Minneapolis for at least 80 hours in a year must comply with the Ordinance.

- **Physical location.** The City of Minneapolis provides an interactive map that allows you to enter the address of your business, available at: <https://gis.hennepin.us/property/map/default.aspx>
- **Eighty-hour threshold.** The Rules provide that “employers are not required to track progress towards [the 80-hour threshold] for each and every Employee, especially where employees clearly exceed the 80 hour threshold.”¹ However, the Rules go on to state that “if an Employee could reasonably dispute a lack of coverage under this threshold, based on occasional work in Minneapolis, an Employer holds a burden to show otherwise in those cases.”² The 80 hours worked towards the coverage threshold count toward sick and safe time hours.³

WHAT DO I HAVE TO DO TO COMPLY?

Provide paid or unpaid sick and safe time. Covered employees must accrue sick and safe time at one hour per 30 hours worked within the City of Minneapolis.⁴

- **Paid versus unpaid.** Employers with six or more employees must provide paid sick and safe time. Employers with fewer than six employees must provide unpaid sick and safe time.⁵ Employer size is based upon the average number of employees per week during the previous calendar year.⁶
- **Use for various purposes beyond illness.** Employers must allow employees to use sick and safe time for their own health and certain family members' illness, injury or health conditions, in addition to other purposes such as absence due to domestic abuse, sexual assault, and stalking.⁷
- **Use within the City.** An employer is only required to allow an employee to use sick and safe time accrued under the Ordinance when the employee is scheduled to perform work within the City of Minneapolis.⁸

- **Equivalent or more generous PTO policies are sufficient.** Employers who provide their employees sick and safe time under a paid time off or other paid leave policy that is sufficient to meet the accrual requirements for sick and safe time and may be used by the employee for the same purposes and under the same conditions as sick and safe time under the Ordinance, are not required to provide additional sick and safe time.⁹

Maintain records. Employers must maintain accurate records for each employee showing hours worked, hours of leave available for sick and safe time, and hours of leave used for sick and safe time purposes. Employers must maintain the records for three (3) years, and allow an employee to inspect his or her records at a reasonable time and place.¹⁰

Post notice posters. Employers must post, in a “conspicuous place at any workplace or job site where any employee works,” notices provided by the City of Minneapolis that inform employees of their rights and remedies under the Ordinance. Employees must post the notice in English, and any language spoken by at least five (5) percent of the employees at the workplace or job site, if the City publishes the notice in that language. Employers that provide employee handbooks must include notice of employees’ rights and remedies.¹¹

WHAT ELSE SHOULD I KNOW?

- **Rollover and capped hours.** Employers must permit an employee to carry over accrued but unused sick and safe time into the following year, but can limit the total amount of accrued but unused sick and safe time for an employee to eighty (80) hours at any time.¹²
- **Front-loaded hours.** Employers can satisfy the accrual requirement by providing at least forty-eight (48) hours of sick and safe time following the initial ninety (90) days of employment for use by the employee during the first calendar year, and providing at least eighty (80) hours of sick and safe time beginning each subsequent calendar year.¹³
- **Finding replacements.** Employers cannot require that the employee seek or find a replacement worker to cover the hours during which the employee uses sick and safe time.¹⁴
- **Employees’ notice of use.** Employers may require the employee to give advance notice of the intention to use sick and safe time if “the need for use is foreseeable,” but never more than seven (7) days’ advance notice. If the need is not foreseeable, an employer may require an employee to give notice of the need for sick and safe time as soon as practicable.¹⁵
- **Documentation of use.** Employers may require reasonable documentation that the sick and safe time is covered under a defined use for absences of more than three (3) consecutive days.¹⁶
- **Enforcement.** The Minneapolis Department of Civil Rights (MDCR) is responsible for implementing, administering and enforcing the Ordinance, including the investigation of possible violations. Employers may appeal a determination of violation by filing an appeal to the MDCR within 21 days from the date of service of the written determination.¹⁷

Chris Larus
CLarus@RobinsKaplan.com
 612-349-0116

Katie Barrett Wiik
KBarrettWiik@RobinsKaplan.com
 612-349-0809

George Ashenmacher
GAshenmacher@RobinsKaplan.com
 612-349-8770

¹ Rules Implementing the Minneapolis Sick and Safe Time Ordinance (“Rule”), Rule 2.1.

² *Id.*

³ Rule 2.2.

⁴ Minneapolis Code of Ordinances § 40.210 (a).

⁵ *Id.* at § 40.220 (g)-(h).

⁶ *Id.* at § 40.200 (a).

⁷ *Id.* at § 40.220 (b).

⁸ *Id.* at § 40.220 (k).

⁹ *Id.* at § 40.310 (b).

¹⁰ *Id.* at § 40.270 (a)-(c).

¹¹ *Id.* at § 40.250.

¹² *Id.* at § 40.210 (c).

¹³ *Id.* at § 40.210 (e).

¹⁴ *Id.* at § 40.220 (e).

¹⁵ *Id.* at § 40.220 (c).

¹⁶ *Id.* at § 40.220 (d).

¹⁷ *Id.* at 40.310(a).