



INFO

Earned Sick and Safe Time Complaints and Administrative Appeals Citizen Handbook

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The Duluth city clerk's Office has the authority to administer and enforce the city's Earned Sick and Safe Time (ESST) Ordinance. The city clerk's office has sole discretion to decide whether to investigate or to otherwise pursue a violation of the ESST ordinance.

This citizen's handbook is intended to help the public understand both the complaint process as well as the administrative appeals process for ESST enforcement. If an employee or an anonymous third-party would like to file a complaint, this handbook explains the processes by which complaints can be filed. Additionally, if an employer receives a notice of investigation or a corresponding determination of violation, this handbook explains the process by which they could either comply with the determination's remedies or appeal the determination.

Anyone who would like to appeal a determination of violation or determination of no violation can submit a written request for an appeal with the Duluth city clerk's office. Appeals are heard through the city's administrative enforcement program. The city clerk's determination of violation/no violation will only be overturned upon a finding that it is clearly erroneous.

Definitions

In addition to the terms defined below, all terms used in this handbook conform with the definitions provided in the City of Duluth Earned Sick and Safe Time Administrative Rules, available at: <https://duluthmn.gov/city-clerk/earned-sick-safe-time/about-earned-sick-safe-time/>.

Appellant: The employer, employee, or complainant filing the appeal.

Appellee: The party responding to the appeal.

Complainant: The party alleging a violation of the Earned Sick and Safe Time (ESST) Ordinance.

Complaints

Eligibility

An employee or other person may file a complaint alleging a violation of the ordinance. In order to initiate an investigation in response to a complaint, the alleged violation must have occurred after January 1, 2020 and the complaint must have been filed within one (1) year of the alleged violation.

Privacy/Confidentiality

Complaints may be filed anonymously or on behalf of another person. It is not necessary to provide complete information, but if you do not provide sufficient information the city may not be able to investigate. All information will be kept confidential, but it may be shared when doing so is necessary in order to conduct an investigation.

Filing a Complaint

Complaints can be filed in several ways. Complaints can be submitted on the city website. Complaints can also be submitted by mail or in person to Code Compliance, 318 City Hall, 411 West First Street, Duluth, MN 55802. A complaint form is available for download on the city website at <https://duluthmn.gov/city-clerk/earned-sick-safe-time/about-earned-sick-safe-time/>.

Complainants will receive a notice upon successfully submitting an online complaint. All complainants will receive a written response to their complaint. If an investigation is pursued, both the complainant and the alleged violator will be notified and informed of the complaint and appeal process.

In order for a complaint to proceed to an investigation, it must provide sufficient information to provide for a reasonable presumption that a violation of the ordinance has occurred, subject to further evidence or information. The more relevant information provided in a complaint the more likely it is to justify further investigation.

Investigations

The city clerk's office has sole discretion to decide whether to pursue an investigation. Investigations will be carried out by the city clerk's office in accordance with the guidelines laid out in this handbook.

Notices of Investigation

If the city clerk's office determines that an investigation is warranted, it will serve a notice of investigation upon the employer named in the complaint. The notice of investigation will inform the employer of the alleged violation(s) and

request both a written statement from the employer as well as all records relevant to the complaint. The notice will be delivered by US mail. A recipient of a notice of investigation will have thirty (30) days from the date on which the notice was received in order to respond to the notice. A failure to provide a timely and full response to the notice will result in a rebuttable presumption of a violation. An employer that fails to respond to a request for records may not use such records in any appeal to challenge the correctness of any determination of violation or penalties assessed under a determination of violation.

Determinations of Violation/No Violation

Except where an agreed-upon settlement has been reached, the city clerk will issue a determination of violation/no violation upon the conclusion of all investigations. The determination will include findings of fact resulting from the investigation, a statement as to whether a violation of the ordinance has or has not occurred, and any appropriate relief ordered in response to a violation.

Enforcement

The city will first attempt to resolve violations through mediation and negotiation whenever possible. However, the city clerk's office is empowered to order appropriate relief for a determination of violation, including but not limited to: administrative fines, suspension or revocation of city-issued licenses and permits, and the initiation of civil legal action by the city attorney. Additional penalties may be applicable if ESST violations are also determined to be violations of state law. A person injured by a violation of the ordinance, once other remedies are exhausted, may bring a civil action in district court to recover any and all damages recoverable at law, including injunctive or other equitable relief.

Mediation and Negotiation

The city recognizes that it can be beneficial for all parties when a dispute is resolved amicably upon mutually agreed upon terms. Accordingly, the city will attempt to mediate disputes and facilitate the reaching of negotiated settlements in response to ESST violations whenever possible.

Administrative Fines

Violations of the ESST ordinance constitute level two violations under the city's fine schedule, subject to a \$200 fine per violation. Administrative fines are cumulative for each violation of the ordinance. Within ten (10) days of the delivery of a determination of violation, the violator shall either pay the amount of the penalty or file a written request for appeal. If a fine is not paid in a timely manner, the city has the authority to: add a late fee equal to 25% of the amount due, obtain a judgment against you and initiate collection proceedings, and assess the amount of any penalty against any property involved and have delinquent fines collected through property taxes.

Licensure/Permitting

A violation of the ESST ordinance can result in city-issued licenses and permits being suspended or revoked. Licenses suspended or revoked under such circumstances will be reinstated upon a determination by the city clerk's office that the ESST violation has been adequately resolved.

State Enforcement

The Minnesota Department of Labor and Industry is the state agency with the authority to investigate violations of and enforce Minnesota's wage and hour laws. Under the 2019 Minnesota Wage Theft Prevention Act, the Minnesota Attorney

General is also empowered to enforce wage theft violations. A failure to provide employees with paid leave to which they are legally entitled may constitute wage theft.

Civil Enforcement

Where prompt compliance is not forthcoming with a final determination of violation, the city clerk's office may refer the case to the city attorney to initiate a civil action against an employer. A civil action brought under these circumstances can result in remedies such as the payment of lost wages, the payment of an additional civil penalty (not to exceed twice the amount awarded for lost wages), reinstatement, injunctive relief, as well as reasonable attorney's fees and costs.

Appeals

An employee, former employee, or employer may appeal a determination of violation/no violation by the city clerk's office. Appeals must be made in writing within fifteen (15) days of the date of service of the determination. To request a hearing, you must mail or deliver in person a written request for a hearing accompanied by an appeal deposit to the city clerk at 411 West First Street, Room 318, Duluth, MN 55802. Appeals are heard pursuant to the city's administrative enforcement program. Please note that the procedure for ESST appeal hearings will conform to the established procedures of the administrative enforcement program unless otherwise indicated here. A citizen handbook for the city's administrative enforcement program is available at <https://duluthmn.gov/city-clerk/administrative-enforcement-program/>.

The cost of a hearing is paid by the city. However, you must pay an appeal deposit. The amount of the deposit is equal to one-half of the amount of any financial penalties levied as part of the determination of violation. Your hearing will not be scheduled until the deposit has been paid. Failure to pay the appeal deposit will result in the forfeiture of your right to a hearing and will be deemed an admission to the determination of violation.

Under the administrative enforcement program, an appeal of a determination of violation will be heard by a hearing officer who is an attorney that is not a city employee. Make certain that you allow at least several hours for an appeal hearing. Other cases may be scheduled at the same time and you may have to wait. The city clerk's office will send you confirmation of the date, time, and location for your hearing.

In the event of an appeal, the hearing officer will consider the record submitted by the city clerk's office and the written statements of all parties involved. At the discretion of the hearing officer, parties may provide oral arguments and additional testimony. Strict rules of evidence and procedure are not required so long as the proceedings are conducted in such a manner as to allow both sides to fairly and fully explain the circumstances. The parties may consult with counsel of their own choosing, at their own expense, who may present oral arguments and respond to questions posed by the hearing officer.

The hearing officer will reverse the city clerk's determination only upon a finding that it is clearly erroneous. The hearing officer's decision will constitute the city's final decision.