

## Duluth Joins Twin Cities to Become Third City in Minnesota to Pass a Safe and Sick Time Ordinance, but Differences From Minneapolis and St. Paul Ordinances May Cause Headaches for Employers

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Continuing a national trend, on May 30, 2018, the Duluth City Council enacted an ordinance requiring private businesses that employ five or more employees to provide paid sick and safe leave to employees. The ordinance goes into effect on January 1, 2020. It requires employers to provide employees up to 40 hours of covered sick and safe leave per year, and it also ensures that employees have a private civil cause of action against their employers for violations of the ordinance.

### Calculating Paid Leave

Under the Duluth ordinance, employers may choose one of two methods for providing paid leave to covered employees. Under the “accrual” method, employers must provide employees with one hour of paid leave for every 50 hours worked, up to 64 hours per year. Employees begin accruing time when they begin their employment, or on the effective date of the ordinance if they were already employed. However, the ordinance permits employees to use only up to 40 hours of accrued paid leave each year and to carry over a maximum of 40 hours of accrued but unused paid leave each year. The Duluth ordinance contrasts notably with the ordinances enacted in Minneapolis and St. Paul, which provide for an accrual rate of one hour of paid leave for every 30 hours worked, up to a maximum of 48 hours per year, but with a maximum carryover of up to 80 hours per year.

Alternatively, employers may choose to provide their employees with 40 hours of paid leave after they have completed their first 90 days of employment. Employers must continue to “frontload” the employee with an additional 40 hours at the beginning of each subsequent year.

Unlike the “regular rate” language used in the ordinances enacted in the Twin Cities, Duluth employers must compensate employees for sick leave at the employee’s “standard hourly rate,” or an “equivalent rate” for salaried employees. The ordinance requires employers to compensate an employee for only those hours the employee was scheduled to work; the ordinance does not require employers to compensate employees for lost tips or commissions. The ordinance also does not require employers to compensate employees for accrued but unused sick leave upon an employee’s separation from the business.

### Covered Employers and Employees

The ordinance applies, with limited exception, to all business entities (including individuals, partnerships, associations, and nonprofits) with five or more covered employees, regardless of whether their employees actually work in Duluth. The total number of employees is calculated using the average number of employees



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employed per week in the prior year. Like the Minneapolis ordinance, construction companies have the option to satisfy the ordinance by paying at least the prevailing wage (as established by Minn. Stat. § 177.42).

The ordinance covers employees who (1) spend more than 50 percent of their working time in a 12-month period working in the City of Duluth; or (2) are based in and spend a “substantial” part of their time working in Duluth and spend less than 50 percent of their work time in a 12-month period in any other particular place. The ordinance exempts numerous classes of employees, including independent contractors, student interns, seasonal employees, and certain railroad employees.

## **Permissible Reasons for Leave**

Covered employees may use accrued paid leave for the following reasons: to care for the employee’s own mental or physical illness, injury, or a health condition, or to care for a family member with a mental or physical illness, injury, or a health condition; to accommodate the employee obtaining a medical diagnosis, care, or treatment of a mental or physical illness, injury, or a health condition of the employee or a family member; or to obtain preventive medical care. Employees may also use paid leave for an absence due to domestic abuse, sexual assault, or stalking of the employee or the employee’s family member.

However, employers may require employees who are absent for more than three consecutive days to provide reasonable documentation to verify the reason for their absence. Employers must keep confidential any documents collected for verification purposes. In addition, employers may require employees to comply with the “usual and customary notice and procedural requirements for absences or leave,” although such requirements may not interfere with the purpose for which the leave is being taken.

## **Additional Requirements and Remedies for Employers to Consider**

Employers may want to take note of several additional features of the ordinance:

- The ordinance prohibits employers from retaliating against employees for requesting or using paid leave.
- Employers must provide employees with notice that they are entitled to receive paid leave, of the amount of paid leave they will receive, of the terms of its use, of the prohibition against retaliation for requests or use of paid leave, and of the employee’s right to file a written complaint for violations of the ordinance.
- The ordinance requires employers to keep records of the hours each employee worked, the number of earned paid leave hours accrued, and the number of earned paid leave hours the employee used for three years. The employer must provide access to these records upon request by the city clerk’s office.
- The city clerk has a variety of remedies available, including ordering the employee to be reinstated with back pay.
- After all other remedies are exhausted, including a discretionary investigation by the city clerk’s office, individual employees are provided with a private civil cause of action against their employer.

## **Final Thoughts for Employers**

Duluth employers with covered employees may want to begin preparing for when the ordinance takes effect on January 1, 2020. However, employers located in other parts of the state may want to stay tuned for future developments. In particular, employers with employees in Duluth and the Twin Cities may want to familiarize themselves with the different requirements of each city’s ordinance.

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