

5200.1202 HOURS WORKED.

Subpart 1. **Eligibility.** An employer must determine in good faith whether an employee is anticipated to perform work for at least 80 hours in a year for that employer in Minnesota pursuant to Minnesota Statutes, section 181.9445, subdivision 5. For the purposes of this subpart, "good faith" means the employer, at a minimum, evaluated the employee's anticipated work schedule and location of hours worked in a manner that is not knowingly false or in reckless disregard of the truth. Employees anticipated to work or who actually work at least 80 hours in a year for that employer in Minnesota must receive earned sick and safe time in accordance with Minnesota Statutes, section 181.9446.

Subp. 2. **Determining hours worked.**

A. Parts 5200.0120 and 5200.0121 govern determinations of an employee's accrual of earned sick and safe time under Minnesota Statutes, section 181.9446, paragraph (a).

B. Notwithstanding item A, for an employee exempt from overtime requirements under United States Code, title 29, section 213(a)(1), who uses earned sick and safe time for an absence of a full work day, more sick and safe time hours cannot be deducted than the number of hours for which the employee is deemed to work for the purposes of accruing earned sick and safe time each work day under Minnesota Statutes, section 181.9446, paragraph (c).

Subp. 3. **Indeterminate shift.**

A. When an employee uses earned sick and safe time for an absence from a scheduled shift of an indeterminate length, such as a shift defined by business needs rather than a specific number of hours, the employer must deduct from the employee's available earned sick and safe time using only one of the following options:

- (1) the hours worked by the replacement worker, if any;
- (2) the hours worked by the employee in the most recent similar shift of an indeterminate length; or
- (3) the greatest number of hours worked by a similarly situated employee, if any, who worked the shift for which the employee used earned sick and safe time.

B. For an employee who uses earned sick and safe time after beginning a shift of an indeterminate length, the employer must use the options in item A by deducting from the employee's available earned sick and safe time the amount associated with the selected option minus the hours already worked by the employee during the shift.

Statutory Authority: *MS s 177.50*

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