

March 30, 2026

VIA EMAIL ONLY

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**Re: *In The Matter of Possible Rules Governing Earned Sick and Safe Time, Minnesota Rules, Part 5200-1200 R-4877*
CAH 25-9001-40129; Revisor R-4877**

Dear Krystle Conley, Ryan R. Anderson and Byron Millea:

Enclosed please find the Report of the Chief Administrative Law Judge in the above-entitled matter, the Report of Administrative Law Judge Megan J. McKenzie, and the official record. The Minnesota Department of Labor and Industry may resubmit the rule to the Chief Administrative Law Judge for review after changing it, or may request that the Chief Administrative Law Judge reconsider the disapproval.

If the Agency chooses to resubmit the rule to the Chief Administrative Law Judge for review after changing it, or request reconsideration, the Minnesota Department of Labor and Industry must file the documents required by Minn. R. 1400.2240, subps. 4 and 5.

If you have any questions regarding this matter, please contact William Moore at (651) 361-7893, william.t.moore@state.mn.us or via facsimile at (651) 539-0310

Sincerely,



CARA HUNTER
Legal Assistant

Enclosure

cc: Office of the Revisor of Statutes (report only)
Legislative Coordinating Commission (report only)

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In The Matter of Possible Rules Governing
Earned Sick and Safe Time, Minnesota
Rules, Part 5200.1200

**ORDER OF THE CHIEF
ADMINISTRATIVE LAW JUDGE
ON REVIEW OF RULES**

This matter came before the Chief Administrative Law Judge pursuant to Minn. Stat. § 14.15, subds. 3, 4 (2024), and Minn. R. 1400.2240, subp. 4 (2025). These provisions require that the Chief Judge review an administrative law judge's findings that a proposed agency rule is defective and should not be approved.

This rulemaking concerns rules proposed by the Department of Labor and Industry (Department) to govern Earned Sick and Safe Time (ESST) under Minn. Stat. §§ 177.50, 181.9445-.9448 (2024). Administrative Law Judge Megan J. McKenzie issued a report on March 20, 2026, in which she approved a number of the rules proposed by the Department. Those approved proposed rules are not before the Chief Administrative Law Judge for review. Rather, this review is limited to consideration of rules disapproved by the Administrative Law Judge.

Judge McKenzie's report disapproved proposed Rule 5200.1202, subp. 2. Under subpart 2(A)-(D), the Department sought to establish standards for accrual of ESST leave not only for hours that employees worked in Minnesota, but also for hours worked in other states, including for non-Minnesota employers, after employees met a threshold of hours worked in Minnesota. It also proposed subpart 2(G), which allows the laws of another state to preempt the rule, stating: "nothing in this subpart is to be construed as requiring compliance or imposing obligations for work performed in a state or locality outside of Minnesota where such benefits are expressly prohibited or preempted by law."¹ Judge McKenzie found that the Department did not have the legal authority to require employers to provide ESST leave as proposed, citing the presumption against extraterritorial application of state law, and that the Department had not established a sufficient factual basis for its regulatory choices in subpart 2, such that the rule was arbitrary and capricious.²

Based upon a review of the record in this proceeding, the Chief Administrative Law Judge **CONCURS** with the Administrative Law Judge's decision to disapprove:

Rule 5200.1202, subp. 2(A);

Rule 5200.1202, subp. 2(B);

¹ Ex. D at 34.

² Report of the Administrative Law Judge (Mar. 20, 2026) at 20-22.

Rule 5200.1202, subp. 2(C);

Rule 5200.1202, subp. 2(D); and

Rule 5200.1202, subp. 2(G).

The Chief Administrative Law Judge respectfully disagrees with the Administrative Law Judge's disapproval of Rule 5200.1202, subps. 2(E)-(F). These provisions address the location of hours worked for an employee engaged in telework and allow an employer to provide ESST leave in excess of the amount required by law. The Department has established the need for and reasonableness of these proposed rules, which do not have extraterritorial effect. Therefore subpart 2(E) and (F) are **APPROVED**.

The Chief Administrative Law Judge also proposes modifications of Rule 5200.1202, subp. 2, that allow the Department to correct the defects, as required by Minn. Stat. § 14.15 (2024), Minn. R. 1400.2240 (2025), and align the approved portions of subpart 2 with the remainder of the rule. The Chief Administrative Law Judge recommends that the Department revise subpart 2 to provide guidance regarding the accrual of ESST leave for hours worked in Minnesota. Such a rule would read as follows:

Subp. 2. **Location of hours worked.** An employee accrues earned sick and safe time in accordance with Minnesota Statutes, section 181.9446, paragraph (a), as follows:

- A. an employee accrues a minimum of one hour of earned sick and safe time for every 30 hours worked in Minnesota up to a maximum of 48 hours of earned sick and safe time in a year;
- B. for the purposes of this subpart, an employee who is teleworking is considered to be working in the state where they are physically located while performing telework; and
- C. notwithstanding this subpart, an employer is permitted to provide earned sick and safe time in excess of the minimum amount required under Minnesota Statutes, section 181.9446.

The Chief Judge has considered the scope of the rulemaking identified in the Department's Dual Notice and concludes that adoption of a rule as modified herein does not make the rule substantially different under Minn. Stat. § 14.05, subp. 2 (2024).

If the Department elects not to correct the defects associated with the proposed rules, the Department may request that the Chief Judge reconsider the disapproval or the Department must submit the rule to the Legislative Coordinating Commission and the House of Representatives and Senate policy committees with primary jurisdiction over state governmental operations for review under Minn. Stat. § 14.15, subd. 4.

If the Department elects to make the changes advised by the Chief Administrative Law Judge and makes no other changes, and upon resubmission the Chief Administrative Law Judge determines that the defects have been corrected, the Department may proceed to adopt the rules. If the Department makes changes to the rules in addition to or other than those advised by the Administrative Law Judge and the Chief Administrative Law Judge, it must submit the rules showing its changes, the rules as initially proposed, and the proposed order adopting the rules to the Chief Administrative Law Judge for review. If the Chief Administrative Law Judge approves those changes, it may adopt the rules in final form.

Dated: March 30, 2026


JESSICA A. PALMER-DENIG
Chief Administrative Law Judge

STATE OF MINNESOTA
COURT OF ADMINISTRATIVE HEARINGS

In The Matter of Possible Rules
Governing Earned Sick and Safe Time,
Minnesota Rules, Part 5200.1200
R-4877

**REPORT OF THE
ADMINISTRATIVE LAW JUDGE**

This matter came before Administrative Law Judge Megan J. McKenzie for a rulemaking hearing on January 21 and 22, 2026. The public hearing was held in person and remotely through an interactive video conference on the WebEx platform.

The Minnesota Department of Labor and Industry (DLI or Department) proposes to adopt new permanent rules regarding earned sick and safe time, a type of paid leave provided by Minnesota law.

The hearing and this Report are part of a larger rulemaking process under the Minnesota Administrative Procedure Act (MAPA).¹ The purpose of this process is to ensure that state agencies meet all requirements established by law for adopting rules.

The hearing process permits agency representatives and the Administrative Law Judge to hear public comments regarding the impact of the proposed rules and what changes might be appropriate. Further, the hearing process provides the public an opportunity to review, discuss, and critique the proposed rules, and to ensure a fully developed rulemaking record. In addition to the comments received at the public hearings, the public was permitted to submit written comments into the record.

The Department panel at the public hearing included: Peter Nikolai, Program Administrator; Byron Millea, Attorney; and Ryan Anderson, Attorney.

SUMMARY OF CONCLUSIONS

The Department established that it has complied with all procedural requirements of rule and law or that any defects in procedure were harmless. With the exception of the disapproved rule detailed below, the Department has established that it has the legal authority to adopt the proposed rules, the rules are needed, reasonable, and not substantially different from those noticed in the *State Register*. The Administrative Law Judge **APPROVES** the proposed rules, as written or modified by the Department in response to comments, with the exception of Proposed Rule 5200.1202, subp. 2, which is **DISAPPROVED**.

¹ Minn. Stat. §§ 14.131 to 14.20 (2024).

Based upon the record, including the Department's exhibits, and the oral and written comments received, the Administrative Law Judge makes the following:

FINDINGS OF FACT

I. Background Regarding the Proposed Rules

1. In the 2023 legislative session, the Minnesota Legislature passed a law requiring employers to provide earned sick and safe time (ESST), a type of paid leave, to covered workers. Effective January 1, 2024, Minn. Stat. §§ 177.50 and 181.9445 to 181.9448 (2024) (ESST law), require most employers to provide covered employees with at least one hour of paid leave for every thirty hours worked for various qualifying purposes. Covered employees may use ESST when an employee is sick, to care for a sick family member, or to seek assistance if the covered employee or their family member has experienced domestic abuse, sexual assault, or stalking.

2. The ESST law was amended by the Legislature in 2024 and 2025. The Department was granted rulemaking authority during the 2024 legislative session under Minn. Stat. § 177.50, subd. 6. The proposed rules are the Department's response to that legislative mandate.

II. Rulemaking Authority

3. Minn. Stat. § 177.50, subd. 6, confers specific authority upon the Department to "adopt rules to carry out the purposes of this section and sections 181.9445 to 181.9448."

4. The Department has statutory authority to adopt the proposed rules.

III. Procedural Requirements of Minn. Stat. Ch. 14 and Minn. R. Ch. 1400

A. Request for Comments

5. Minn. Stat. § 14.101 (2024) requires that an agency, at least 60 days prior to the publication of a notice of intent to adopt rules or a notice of hearing, solicit comments from the public on the subject matter of a proposed rulemaking. Such notice must be published in the *State Register*.²

6. On March 3, 2025, the Department published a Requests for Comments in the *State Register* seeking comments on rules governing ESST.³

7. The Request for Comments was published at least 60 prior to the publication of the Notice of Intent to Adopt Rules, as discussed below.

² Minn. Stat. § 14.101.

³ Exhibits (Ex.) A1 and A2.

8. The Administrative Law Judge finds that the Department complied with the requirements set forth in Minn. Stat. § 14.101.

B. Publication of Notice of Hearing

9. Minn. Stat. § 14.14, subd. 1a, and Minn. R 1400.2080, subp. 6 (2025), require that an agency publish in the State Register a notice of hearing at least 30 days prior to the date of hearing and at least 30 days prior to the end of the comment period.

10. On October 10, 2025, the Department requested review and approval of its Dual Notice of Intent to Adopt Rules Without a Public Hearing Unless 25 or More Persons Request a Hearing (Dual Notice) under Minn. R. 1400.2080.⁴

11. On October 17, 2025, the Administrative Law Judge issued an Order approving the Department's Dual Notice.⁵

12. On October 27, 2025, the Department published the Dual Notice in the State Register stating its intent to adopt rules following the receipt of input from the public.⁶ In the Dual Notice, the Department announced it would hold a hearing on January 21 and 22, 2025, via WebEx and in person at the Department of Labor and Industry, Minnesota Room, 443 Lafayette Road North, St. Paul, Minnesota, if 25 or more persons requested a hearing.⁷

13. On November 3, 2025, the Department published a correction in the State Register noting the hearing dates would occur in 2026, not 2025 as originally published.⁸

14. The Dual Notice and the Correction to Hearing Dates contain all the information required under Minn. R. 1400.2080 (2025) and were published more than 30 days before the hearing dates and the close of the comment period.⁹

15. The Department received more than 25 requests for a hearing.¹⁰

⁴ Request to Approve Dual Notice (Oct. 10, 2025).

⁵ Order Approving Dual Notice (Oct. 17, 2025).

⁶ Ex. F.

⁷ Ex. F.

⁸ Ex. K1.

⁹ Even without the correction, the error in the year would be harmless error under Minn. Stat. § 14.15, subd. 5, because no reasonable person would believe the hearing would take place at a date in the past.

¹⁰ Ex. I.

C. Notice Requirements

1. Notice to Official Rulemaking List

16. Minn. Stat. § 14.14, sub. 1a, requires that each agency maintain a list of all persons who have registered with the agency for the purpose of receiving notice of rule proceedings.

17. On October 27, 2025, the Department mailed or emailed a copy of the Dual Notice to all persons and entities on its official rulemaking list.¹¹

18. Minn. Stat. § 14.14, subd. 1a, requires that agencies give notice of intent to adopt rules by U.S. mail or electronic mail to all persons on its official rulemaking list at least 30 days before the date of hearing.

19. Minn. R. 1400.2080, subpart 6, provides that a notice of hearing or notice of intent to adopt rules must be mailed at least 33 days before the end of the comment period or the date of the hearing.

20. The Administrative Law Judge concludes that the Department fulfilled the notice requirements set forth in Minn. Stat. § 14.14 and Minn. R. 1400.2080, subp. 6.

2. Additional Notice

21. Minn. Stat. § 14.14, subd. 1a(a) requires that an agency make reasonable efforts to notify persons or classes of persons who may be significantly affected by the rule being proposed by giving notice of its intent to adopt rules. Such notice may be made in newsletters, newspapers, or other publications, or through other means of communication. This notice is referred to as “additional notice” and is detailed by an agency in its additional notice plan.

22. Minn. Stat. § 14.131 and 14.23 require that an agency include in its Statement of Need and Reasonableness (SONAR) a description of its efforts to provide additional notice. Alternatively, the agency must detail why additional notification efforts were not made.

23. An agency may request approval of its additional notice plan by an administrative law judge prior to publishing the request for comments or notice of the proposed rules.¹²

24. On July 5, 2025, the Department requested review and approval of its Additional Notice Plan under Minn. R. 1400.2060 (2025).

¹¹ Ex. G1.

¹² Minn. R. 1400.2060, subps. 1, 3.

25. The Department's Additional Notice Plan included emailing a notice with a hyperlink to its docket page that contains links to electronic copies of the Dual Notice, SONAR, and the proposed rules to the following persons:¹³

- a. Individuals subscribed to the *Wage & Hour Bulletin*;
- b. Individuals subscribed to the Department's Labor Standards and ESST Rulemaking Notice lists;
- c. Individuals and entities subscribed to the Department's webinar announcement lists;
- d. Grantee organizations who have worked on ESST outreach in 2023 or 2024;
- e. Approximately 380 employer associations, chambers of commerce, and other organizations representing employers in Minnesota;
- f. Interested state legislators, including bill authors;
- g. City-level enforcement offices in Minneapolis, St. Paul, and Bloomington, Minnesota;
- h. Individuals at state agencies that have a close connection to the impacts of ESST rules; and
- i. Individuals who requested a copy of the ESST rule draft during the Department's first comment period for this rulemaking.

26. The Department's Additional Notice Plan also proposed to: (1) create an automatic reply to those who email DLI's ESST email inbox noting the request for comment and directing people to submit comments; and (2) add a notice at the top of the ESST webpage regarding DLI's ESST rulemaking and directing people to DLI's docket page, which provides a link to the request for comments and instructions to submit comments.

27. On July 10, 2025, the Administrative Law Judge issued an Order approving the Department's Additional Notice Plan.¹⁴

28. On October 27, 2025, the Department emailed a link to an electronic copy of the Dual Notice to all persons and associations who had registered with the Department to receive rulemaking notices and to all persons and associations identified in its Additional Notice Plan.¹⁵ The Department mailed a copy of the Dual Notice by

¹³ Ex. D.

¹⁴ Ex. K2.

¹⁵ Exs. G1, G2 and H.

depositing the copies in the United States mail with postage paid to the individuals and associations registered to receive rulemaking notices by mail.¹⁶

29. The Department sufficiently complied with its Additional Notice Plan and fulfilled the additional notice requirements provided in Minn. Stat. §§ 14.14, subd. 1a(a), .131. The Department did not provide any evidence that it complied with the portions of the notice plan regarding the ESST email inbox automatic reply or the ESST website header. However, Minn. Stat. § 14.15, subd. 5 requires an administrative law judge to disregard an error or defect in the proceeding due to an “agency’s failure to satisfy any procedural requirement” if the administrative law judge finds “that the failure did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process” The Administrative Law Judge concludes that any failure to implement the ESST email inbox automatic reply or the ESST website header would not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. For those reasons, these procedural errors were harmless errors under Minn. Stat. § 14.15, subd. 5(1).

3. Notice to Legislators

30. Under Minn. Stat. § 14.116 (2024), an agency is required to send a copy of the Notice of Intent to Adopt and the SONAR to certain legislators at the time it mails its Notice of Intent to Adopt to persons on its rulemaking list and pursuant to its additional notice plan.

31. The Department filed a certificate showing it emailed the Dual Notice to “Interested state legislators, including bill authors.”¹⁷

32. The Department did not specifically state whether “interested legislators” included the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission, as required by Minn. Stat. § 14.116(b).

33. The Department submitted letters showing compliance with Minn. Stat. § 14.116(b) on March 11, 2026. However, the record in this matter had already closed pursuant to Minn. R. 1400.2230, subp. 3 (2025), and the March 11, 2026, letters are not part of the record.

34. Pursuant to Minn. Stat. § 14.15, subd. 5, the Administrative Law Judge concludes that the Department’s ambiguous notice to “interested legislators” did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. This procedural error was a harmless error under Minn. Stat. § 14.15, subd. 5(1).

¹⁶ Ex. G1 and G2.

¹⁷ Ex. G1.

4. Notice to Legislative Reference Library

35. Minn. Stat. § 14.131 requires the agency to send a copy of the SONAR to the Legislative Reference Library when the Notice of Intent to Adopt is mailed.

36. On October 27, 2025, the Department emailed a copy of the SONAR to the Legislative Reference Library.¹⁸

37. The Department complied with Minn. Stat. § 14.131 and Minn. R. 1400.2070, subp. 3 (2025).

5. Notice to Commissioner of Agriculture

38. Minn. Stat. § 14.111 (2025) imposes additional notice requirements when the proposed rules affect farming operations. The statute requires that an agency provide a copy of any such changes to the Commissioner of Agriculture at least 30 days prior to publishing the proposed rules in the *State Register*.¹⁹

39. The Department's proposed rules do not impose restrictions or have an impact on farming operations. As a result, the Department was not required to notify the Commissioner of Agriculture.²⁰

D. Rule Hearing and Submission of Written Comments

40. The Administrative Law Judge conducted a public rulemaking hearing on January 21 and 22, 2026. Each hearing was held both in-person and via WebEx.

41. In support of its request for approval to adopt the proposed rules, the Department offered the following documents into the record as exhibits, as required by Minn. Stat. § 14.14, subd. 2a, and Minn. R. 1400.2220 (2025):²¹

- A1: Request for Comments, as published in the State Register on July 22, 2024
- A2: Request for Comments, as published in the State Register on March 3, 2025
- B: Petition for rulemaking (Not enclosed)
- C: Proposed Rule dated September 8, 2025, with Revisor's approval

¹⁸ Ex. E.

¹⁹ Minn. Stat. § 14.111.

²⁰ See Ex. D at 96.

²¹ No Petition for Rulemaking or Chief Judge's authorization to omit proposed rule text was filed in this case.

- D: Statement of Need and Reasonableness (SONAR)
- E: Letter to the Legislative Reference Library regarding the SONAR
- F: Dual Notice as mailed and as published in the State Register on October 27, 2025
- G1: Certificates of Mailing and Emailing
- G2: Certificates of Accuracy of the Mailing and Emailing Lists
- H: Additional Notice Transmittal Email
- I: Comments received after publication of the Dual Notice
- J: Chief Judge's authorization to omit proposed rule text (Not enclosed)
- K1: Correction to hearing dates contained in the Dual Notice, as published in the State Register on November 3, 2025
- K2: Judge McKenzie's approval of the Additional Notice Plan dated July 10, 2024
- K3: The Department's Responses to public comments received after the publication of the Dual Notice
- K4: Proposed Rule, as modified, post Dual Notice publication and comment period
- K5: Comments received after publication of the first Request for Comment
- K6: Comments received after publication of the second Request for Comment

42. The hearing was open to all members of the public who wished to attend. The proceedings continued each day until all interested persons, groups, or associations had an opportunity to be heard concerning the proposed rules. Two members of the public offered comments at the January 21, 2026 hearing. One member of the public offered comments at the January 22, 2026 hearing.

43. The initial post-hearing comment period remained open until January 29, 2026. No comments were filed during the initial comment period. Following the initial comment period, the record remained open for the rebuttal comment period for an additional five business days to allow interested persons and the Department the opportunity to file a written response to the comments received during the initial period. The Department filed a response to comments received at the hearing February 5, 2026 and the record closed on that date.

44. On March 4, 2026, Chief Administrative Law Judge Jessica A. Palmer-Denig issued an Order Granting an Extension of the Administrative Law Judge's Report. The Order gave the Administrative Law Judge until March 20, 2026, to complete her Report.

IV. Statutory Requirements for the SONAR

A. Regulatory Factors

45. The Administrative Procedure Act requires an agency adopting rules to address eight factors in its SONAR.²² Those factors are:

- (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;
- (2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;
- (3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;
- (4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;
- (5) the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals;
- (6) the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable

²² Minn. Stat. § 14.131.

categories of affected parties, such as separate classes of government units, businesses, or individuals;

- (7) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference; and
- (8) an assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule and reasonableness of each difference.²³

1. Classes of Persons Affected, Benefitted, or Bearing Costs of the Proposed Rule

46. The Department states that the persons and entities affected directly and indirectly by the proposed rules include nearly all employers and employees in Minnesota.²⁴ The Department notes that very few workers are not eligible for ESST, including independent contractors, volunteer or paid on-call firefighters, elected or appointed officials, and certain farm workers.²⁵

47. Due to the broad application of ESST, the Department states that nearly all employers in Minnesota will bear the costs of compliance with the proposed rules.²⁶

48. The Department states that employers and employees will be the primary beneficiaries of the proposed rules due to the clarity provided by the proposed rules.²⁷

49. The Department included additional analysis for Proposed Rule 5200.1202, subp. 2 – Location of Hours Worked.²⁸ The Department notes this proposed rule will impact employers with ESST-eligible employees who work primarily in other states.²⁹ The Department also notes the impact of the proposed rule on employers who had previously been providing ESST accrual only for hours worked in Minnesota. This proposed rule would require employers to provide ESST accrual for all hours worked if the employee is anticipated to work more than 50 percent of their hours in Minnesota. The Department acknowledges that employers may incur nominal administrative costs related to making good-faith determinations as to whether their employees are anticipated to work 50 percent or less of their hours in Minnesota.³⁰ The Department states that the proposed rule benefits affected employees who will receive

²³ *Id.*

²⁴ Ex. D at 31.

²⁵ See Minn. Stat. § 181.9445, subd. 5.

²⁶ Ex. D at 31.

²⁷ *Id.*

²⁸ At the time of the SONAR, the location of hours worked provision was 5200.1202, subp. 1. A new subpart 1 was added in response to comments and this provision is 5200.1202, subp. 2, in the currently proposed rules. The hours worked subpart is referred to as 5200.1202, subp. 2, throughout this report for the sake of consistency.

²⁹ Ex. D at 31.

³⁰ Ex. D at 32.

full ESST accruals for their hours worked and may be able to use more leave for ESST qualifying purposes.³¹

2. Probable Costs to the Agency and Other Agencies for Implementation and Enforcement and Effect on State Revenues

50. The Department does not anticipate any additional costs to itself or any other state agency in implementing the proposed rules.³²

51. The Department notes that proposed rule 5200.1202, subp. 2, related to location of hours worked, requires employers to make a good faith determination of their employees' anticipated work locations to justify restricting employee accrual.³³ State agencies, as employers, are not anticipated to incur additional costs by implementing proposed rule 5200.1202, subp. 2, because most, if not all, state agencies already provide paid leave sufficient to meet the ESST minimum requirements.³⁴

52. The Department considered whether the proposed rules would increase costs to itself as a regulator and concluded that the proposed rules will not meaningfully increase enforcement costs to the Department in its investigations or provision of technical assistance to employers and employees and that increased clarity will ensure better compliance without increased cost.³⁵

53. The Administrative Law Judge finds that the Department satisfied the requirements of Minn. Stat. § 14.131(2).

3. Less Costly or Intrusive Methods

54. The Department states that the rules are intended to clarify the ESST law rather than create new requirements resulting in costs to stakeholders.³⁶ The Department argues that costs to employers are a result of the ESST law itself and the rules are largely cost-neutral or may limit costs in some circumstances.³⁷

55. The Department acknowledges that some employers may incur minimal costs related to making a good faith determination of their employees' anticipated work locations under Proposed Rule 5200.1202, subp. 2.³⁸ However, the Department

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.* at 33.

³⁸ *Id.*

determined there was no less intrusive method for ensuring employees receive all ESST accrual to which they are entitled under the ESST law.³⁹

56. The Department fails to acknowledge that Proposed Rule 5200.1202, subp. 2, is an expansion of the current interpretation of the ESST law that would require employers to incur additional costs to provide ESST accrual for many employees working in other states. The current interpretation of law, requiring only accrual for hours worked in Minnesota, is less costly to those employers. This is a significant and material error. However, the Department's analysis is adequate except as to Proposed Rule 5200.1202, subp. 2, which is disapproved on other grounds as described below.

4. Alternative Methods Rejected

57. The SONAR describes the alternative methods for achieving the purpose of the proposed rules that were seriously considered by the Department and explains the reasons why these alternatives were rejected in favor of the proposed rule changes.⁴⁰ The Department considered alternatives to the portions of the rules regarding location of hours worked, indeterminate shifts, and no required use of ESST. In each instance the SONAR describes in detail why these alternatives were rejected.

58. The Administrative Law Judge finds that the Department sufficiently satisfied the requirements of Minn. Stat. § 14.131(4).

5. Probable Costs of Complying

59. The Department determined that the proposed rules themselves are cost-neutral for all parties, as affected parties are already required to comply with the ESST law, and the proposed rules do not add additional costs.⁴¹

60. The Department identified that Proposed Rule 5200.1202, subp. 2, regarding location of hours worked, potentially impacts the required amount of ESST accrual for employees who work more than 50 percent of their hours in Minnesota and whose employers had limited their ESST accrual based on the employee working some hours outside of the state.⁴² The Department opined that the additional accrual itself is not a cost. The Department identified only the cost of the administrative function of making good-faith determinations regarding an employee's anticipated work locations and characterized that cost as "nominal."

61. The Administrative Law Judge finds that the Department sufficiently satisfied the requirements of Minn. Stat. § 14.131(5).

³⁹ *Id.*

⁴⁰ *Id.* at 33-37.

⁴¹ *Id.* at 37.

⁴² *Id.*

6. Probable Costs or Consequences of Not Adopting the Proposed Rules

62. In addition to identifying the costs of implementing, operating, complying with, and enforcing the rules, the SONAR also evaluates the probable costs or consequences of not adopting the proposed rule changes.⁴³

63. The Department states that all stakeholders would be negatively impacted without the clarity offered by the proposed rules.⁴⁴ The Department asserts that the consequences of non-adoption include inconsistency in administration of ESST by employers and uncertainty about when the ESST applies to employees who work both in Minnesota and outside of Minnesota, among other things.⁴⁵

64. The Administrative Law Judge finds that the Department sufficiently satisfied the requirements of Minn. Stat. § 14.131(6).

7. Differences Between the Proposed Rule and Current Federal Regulations

65. The Department notes there are currently no federal regulations related to providing employees paid sick and safe time leave from work. The federal Family and Medical Leave Act (FMLA)⁴⁶ provides only unpaid leave. The Department states it has not identified any relevant differences between FMLA regulations or any other federal regulations and the proposed rules.⁴⁷

66. The Administrative Law Judge finds that the Department sufficiently satisfied the requirements of Minn. Stat. § 14.131(7).

8. Cumulative Effect of the Rule with other Federal and State Regulations

67. The SONAR states that Proposed Rule 5200.1205, subp. 1, clarifies that the ESST law prohibits employer-mandated ESST use during an employee's FMLA leave or any other situation. The Department states no other proposed rules affect federal or state regulations and that the proposed rules do not create any cumulative regulatory burden related to the specific purpose of the proposed rules.

68. The Administrative Law Judge finds that the Department sufficiently satisfied the requirements of Minn. Stat. § 14.131(8).

⁴³ *Id.* at 38.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ 29 U.S.C. § 2601 *et seq.*

⁴⁷ Ex. D at 39.

B. Performance Based Regulation

69. MAPA requires that an agency describe in its SONAR how it has considered and implemented the legislative policy supporting performance-based regulatory systems.⁴⁸ A performance-based rule is one that emphasizes superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.⁴⁹

70. In its SONAR, the Department states that the proposed rules provide clarity without proposing overly prescriptive and inflexible rules. The Department emphasized that it endeavored to provide options where possible rather than mandating one particular approach.

71. The Administrative Law Judge finds that the Department has met the requirements set forth in Minn. Stat. § 14.131 related to the consideration and implementation of the legislative policy supporting performance-based regulatory systems.

C. Consultation with the Commissioner of Minnesota Management and Budget

72. Minn. Stat. § 14.131 requires that agencies consult with the Commissioner of Minnesota Management and Budget (MMB) to help evaluate the fiscal impact and fiscal benefits of the proposed rule on local units of government.

73. The Department sent MMB a copy of the proposed rules and the draft SONAR for review and analysis under Minn. Stat. § 14.131.⁵⁰ On October 1, 2025, MMB issued a Memorandum analyzing the fiscal impacts and benefits of the proposed rules on local units of government.⁵¹ MMB concluded:

Overall, the proposed rules should not create additional costs because affected parties already must comply with ESST law. The proposed rules for accrual may have a nominal fiscal cash flow impact on local governments because they may result in additional administrative costs, depending on how local governments currently track employee hours. Though exact costs are unknown, DLI states that cost of compliance will not be greater than \$25,000 for any small city.⁵²

74. The Administrative Law Judge finds that the Department fulfilled its legal requirements to consult with the MMB under Minn. Stat. § 14.131.

⁴⁸ Minn. Stat. §§ 14.002, .131.

⁴⁹ Minn. Stat. § 14.002.

⁵⁰ Ex. 3 to Request to Schedule Rules Hearing (Oct. 10, 2025); Ex. D at 43.

⁵¹ Ex. 3 to Request to Schedule Rules Hearing (Oct. 10, 2025).

⁵² *Id.*

D. Costs to Small Businesses and Cities

75. Minn. Stat. § 14.127 (2024) requires the Department to “determine if the cost of complying with a proposed rule in the first year after the rule takes effect will exceed \$25,000 for: (1) any one business that has less than 50 full-time employees; or (2) any one statutory or home rule charter city that has less than ten full-time employees.” The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.

76. The Department determined that the cost of complying with the proposed rules will not exceed \$25,000 for any business or any statutory or home rule charter city in the first year following adoption of the rules.⁵³

77. The Department separately considered whether Proposed Rule 5200.1202, subp. 2, regarding location of hours worked, could result in additional costs for small businesses.⁵⁴ The Department concluded that because the proposed rule addresses only the accrual of ESST, not ESST use, and accrual itself does not increase costs, that the rule did not increase costs for small business who were previously only providing ESST accrual for hours worked in Minnesota.⁵⁵

78. The Department’s analysis is flawed. Employees can only use ESST that is accrued. If an employee accrues more ESST, the additional leave available is a real and present potential cost to the employer. However, ESST is required by statute, has limited uses, and the amount of ESST any set of employees may use is uncertain. Additionally, the Department’s further analysis of the limited amount of ESST accrual in the ESST law favors approving the Department’s determination that the cost of complying with the proposed rules in the first year after the rules take effect will not exceed \$25,000 for any small business.

E. Adoption or Amendment of Local Ordinances

79. Under Minn. Stat. § 14.128 (2024), the agency must determine if a local government will be required to adopt or amend an ordinance or other regulation to comply with a proposed agency rule. The agency must make this determination before the close of the hearing record, and the Administrative Law Judge must review the determination and approve or disapprove it.

80. The Department concluded that the proposed rules do not require amendment or adoption of local ordinances. The Department states that it regularly confers with local governments that have their own ESST laws and that local

⁵³ Ex. D at 44.

⁵⁴ *Id.*

⁵⁵ *Id.*

governments can still follow and enforce their own laws where those laws do not violate the minimum standards and requirements of the state ESST law.⁵⁶

81. The Department has determined no local government will be required to adopt or amend an ordinance or other regulation to comply with the proposed rules and the Administrative Law Judge approves that determination.

V. Rulemaking Legal Standards

82. Under MAPA, an agency proposing to adopt rules must:

- (1) Establish its statutory authority to adopt the proposed rules;
- (2) Demonstrate that it has fulfilled all relevant legal and procedural requirements; and
- (3) Demonstrate the need for and reasonableness of each portion of the proposed rules with an affirmative presentation of facts.⁵⁷

83. In support of a rule, the agency may rely upon materials developed for the hearing record,⁵⁸ “legislative facts” (namely, general and well-established principles that are not related to the specifics of a particular case, but which guide the development of law and policy),⁵⁹ and the agency’s interpretation of related statutes.⁶⁰

84. A proposed rule is reasonable if the agency can “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”⁶¹

85. By contrast, a proposed rule will be deemed arbitrary and capricious where the agency’s choice is based upon whim or devoid of articulated reasons, or if it “represents its will and not its judgment.”⁶² The Minnesota Supreme Court has further defined an agency’s burden in adopting rules by requiring it to “explain on what evidence it is relying and how the evidence connects rationally with the agency’s choice of action to be taken.”⁶³

⁵⁶ Ex. D at 43.

⁵⁷ Minn. Stat. §§ 14.05, subd. 1, .14, subd. 2 (2024); Minn. R. 1400.2100 (2025).

⁵⁸ See *Manufactured Hous. Inst. v. Pettersen*, 347 N.W.2d 238, 240 (Minn. 1984); *Minnesota Chamber of Commerce v. Minnesota Pollution Control Agency*, 469 N.W.2d 100, 103 (Minn. Ct. App. 1991).

⁵⁹ Compare generally *United States v. Gould*, 536 F.2d 216, 220 (8th Cir. 1976).

⁶⁰ See *Mammenga v. Agency of Human Servs.*, 442 N.W.2d 786, 789-92 (Minn. 1989); *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

⁶¹ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

⁶² See *Mammenga*, 442 N.W.2d at 789; *St. Paul Area Chamber of Commerce v. Minn. Pub. Serv. Comm’n*, 251 N.W.2d 350, 357-58 (Minn. 1977).

⁶³ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

86. An important corollary to these standards is that, when proposing new rules, an agency is entitled to make choices between different possible regulatory approaches, so long as the alternative selected by the agency is a rational one. Thus, while reasonable minds might differ as to whether one or another particular approach represents “the best alternative,” the agency’s selection will be approved if it is one that a rational person could have made.⁶⁴

87. Additionally, under Minn. R. 1400.2100, a rule must be disapproved if it:

- was not adopted in compliance with procedural requirements of this chapter, Minnesota Statutes, chapter 14, or other law or rule, unless the judge decides that the error must be disregarded under Minnesota Statutes, section 14.15, subdivision 5, or 14.26, subdivision 3, paragraph (d);
- is not rationally related to the agency's objective or the record does not demonstrate the need for or reasonableness of the rule;
- exceeds, conflicts with, does not comply with, or grants the agency discretion beyond what is allowed by, its enabling statute or other applicable law;
- is unconstitutional or illegal;
- improperly delegates the agency's powers to another agency, person, or group;
- is not a "rule" as defined in Minnesota Statutes, section 14.02, subdivision 4, or by its own terms cannot have the force and effect of law; or
- is subject to Minnesota Statutes, section 14.25, subdivision 2, and the notice that hearing requests have been withdrawn and written responses to it show that the withdrawal is not consistent with Minnesota Statutes, section 14.001, clauses (2), (4), and (5).

88. If changes to the proposed rule are made by the agency or suggested by the administrative law judge after original publication of the rule language in the *State Register*, it is also necessary for the administrative law judge to determine if the new language is substantially different from that which was originally proposed.⁶⁵ The standards to determine whether changes to proposed rules create a substantially different rule are found in Minn. Stat. § 14.05, subd. 2. The statute specifies that a modification does not make a proposed rule substantially different if the differences are:

⁶⁴ *Minnesota Chamber of Commerce*, 469 N.W.2d at 103; *Peterson v. Minn. Dep't of Labor & Indus.*, 591 N.W.2d 76, 78 (Minn. Ct. App. 1999).

⁶⁵ Minn. Stat. § 14.05, subd. 2 (2024).

- (1) within the scope of the matter announced in the notice of hearing and are in character with the issues raised in that notice;
- (2) a logical outgrowth of the contents of the notice of hearing and the comments submitted in response to the notice; and
- (3) the notice of hearing provided fair warning that the outcome of the rulemaking proceeding could be the rule in question.⁶⁶

89. In reaching a determination regarding whether modifications result in a rule that is substantially different, the administrative law judge is to consider whether:

- (1) persons who will be affected by the rule should have understood that the rulemaking proceeding could affect their interests;
- (2) the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of hearing; and
- (3) the effects of the rule differ from the effects of the proposed rule contained in the notice of hearing.⁶⁷

VI. Rule by Rule Analysis

90. This rulemaking generated significant public interest and numerous comments. Forty-three comments were submitted after the Department published the Dual Notice on October 27, 2025.

91. The Administrative Law Judge has reviewed every comment made in this proceeding. Many comments were directed at portions of the ESST statute rather than the rules. Commenters expressed dissatisfaction with the broad scope of the law and lack of exemptions. These comments on the underlying legislation should be directed to the legislature.

92. And while the Department received numerous comments objecting to the rules generally, several sections of the proposed rules were not specifically opposed by any member of the public or were supported by members of the public and were adequately supported by the SONAR. Accordingly, this Report will not necessarily address each comment or rule part. Rather, the discussion that follows below focuses on those portions of the proposed rules as to which commenters prompted a genuine dispute as to the reasonableness of the agency's regulatory choice or otherwise requires closer examination.

⁶⁶ *Id.*, subd. 2(b).

⁶⁷ *Id.*, subd. 2(c).

93. The Administrative Law Judge finds that the agency has demonstrated by an affirmative presentation of facts the need for and reasonableness of all rule provisions that are not specifically addressed in this Report.

94. Further, the Administrative Law Judge finds that all provisions that are not specifically addressed in this Report are authorized by law and that there are no other defects that would bar the adoption of those rules.

A. 5200.1202 Hours Worked

1. Subpart 1 – Eligibility

95. The Department modified Proposed Rule 5200.1202, subp. 1, after publication of the Dual Notice in the *State Register* and renumbered the original subparts accordingly.⁶⁸ The new subpart adds a good faith standard to the employer's determination of whether a worker meets the definition of an employee in Minn. Stat. § 181.9445, subd. 5. Under Proposed Rule 5200.1202, subp. 1, a worker is an employee for the purposes of the ESST law if the person "is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota."⁶⁹

96. The Department argues that clarifying the standard by which the employer's determination under Minn. Stat. § 181.9445 must be made is reasonable and necessary, is within the scope of the Dual Notice, and is a logical outgrowth of the Dual Notice.⁷⁰ The Department also argues that the effect of the proposed rule does not differ significantly from the effects of the original proposed rules and addresses an issue closely related to those rules.⁷¹

97. This additional subpart provides clarity and does not create a substantially different rule within the meaning of Minn. Stat. § 14.05, subd. 2. The proposed subpart is well within the scope of the Dual Notice, is a logical outgrowth of the original proposed rules clarifying the scope of the ESST law, and does not differ significantly from the effects of the original proposed rules.

98. The ESST law is silent as to what standard to apply in assessing an employer's determination under Minn. Stat. § 181.9445, subd. 5. A good faith standard, as defined in the proposed subpart, is a logical and reasonable interpretation of the statute and will provide clarity to employers and employees in implementing the law.

99. The Department has shown that this rule part is needed and reasonable and it is **APPROVED**.

⁶⁸ Exs. K3-K4.

⁶⁹ Ex. K4.

⁷⁰ Ex. K3 at 2.

⁷¹ *Id.*

2. Subpart 2 – Location of Hours Worked

100. Proposed Rule 5200.1202, subp. 2, establishes a 50 percent threshold for determining whether an employee qualifies for ESST accrual based only on hours worked in Minnesota or based on all hours worked, both in and outside of Minnesota.

101. Proposed Rule 5200.1202, subp. 2,⁷² generated numerous comments and was the subject of the most requests for a hearing of any proposed rule.⁷³ Two of the three comments made at the rulemaking hearings also addressed this rule.⁷⁴

102. Commenters argued that Proposed Rule 5200.1202, subp. 2, of the proposed rule is an expansion beyond existing authority under Minn. Stat. § 181.9446.⁷⁵ Commenters argue that the statute does not explicitly allow for hours worked outside of Minnesota to be counted for purposes of ESST accrual and questioned whether Minnesota can regulate work performed outside of its borders.⁷⁶ Commenters also raised concerns about the potential for double accrual when another state offers ESST, logistical concerns about tracking hours, and that the proposed rule contradicted previous guidance issued by the Department.⁷⁷

103. Despite bearing the burden to show the proposed rule is within its authority,⁷⁸ the Department's post-hearing comment response contains no legal citations and minimal analysis defending the extraterritorial application of the 50 percent rule.⁷⁹ Likewise, the SONAR contains no legal analysis and concludes that the rule is permissible without sufficient explanation.⁸⁰ The Department simply concludes, without legal support that "employees who predominantly work in Minnesota are clearly subject to employment laws in Minnesota."⁸¹ The SONAR also states that "employees who work the majority of their hours in Minnesota have a significant and predominant employment connection with Minnesota such that the ESST law *should* cover the entirety of the employee's hours worked for the purposes of accruing ESST, regardless of their location."⁸² The Department may believe the law *should* cover work performed outside of Minnesota, but it does not grapple with whether this interpretation is permissible.

104. Under the statute, employees accrue "a minimum of one hour of earned sick and safe time for every 30 hours worked up to a maximum of 48 hours of earned

⁷² The comments refer to Proposed Rule part 5200.1202, subp. 1, because it was numbered subpart 1 at the time of the comments.

⁷³ Ex. I.

⁷⁴ See Transcript (Tr.) of Jan. 21, 2026 Hearing.

⁷⁵ Tr. of Jan. 21, 2026 Hearing at 27:9-30:17; Ex. I.

⁷⁶ Ex. I.

⁷⁷ Tr. of Jan. 21, 2026 Hearing; Ex. I.

⁷⁸ Minn. Stat. §§ 14.05, subd. 1, .14, subd. 2; Minn. R. 1400.2100.

⁷⁹ Department Comment Responses (Feb. 5, 2026).

⁸⁰ Ex. D.

⁸¹ Department Comment Responses (Feb. 5, 2026); Ex. D.

⁸² Ex D. (*Emphasis Added.*)

sick and safe time in a year.”⁸³ “Employee” means any person who is employed by an employer, including temporary and part-time employees, who is anticipated by the employer to perform work for at least 80 hours in a year for that employer in Minnesota, with certain exceptions that are not relevant to this analysis.⁸⁴

105. The statute does not specify whether ESST accrues for all hours worked or only those hours worked in Minnesota. However, “a general presumption exists against the extra-territorial application of a state’s statutes.”⁸⁵ The legislature did not clearly express an intent to apply the ESST statute to work performed outside of Minnesota. The proposed 50 percent rule therefore contravenes the language of the statute.

106. However, even if one assumes for a moment that the legislature did intend for the extra-territorial application of the ESST statute, the 50 percent rule would still fail. The plain language of the statute specifies a minimum threshold of hours that must be worked in Minnesota (80)⁸⁶ and a rate of accrual for hours worked.⁸⁷ If the statute extends to hours worked outside of Minnesota, it must therefore apply to all hours worked outside of Minnesota once the 80-hour threshold is met. The Department does not have the authority to adopt an accrual rate different than the statute.⁸⁸

107. Furthermore, the Department offers no justification for the choice of 50 percent of hours worked over another percentage. Full-time employment of 40 hours per week, 52 weeks per year is 2080 hours. Under the Department’s “more than 50 percent” proposal, an employee who works 1041 hours in Minnesota and 1039 hours in another state is entitled to ESST for all hours worked, whereas an employee who works 1040 hours in Minnesota and 1040 hours in another state is not. The Department states the rule is “reasonable because employees who work the majority of their hours in Minnesota have a significant and predominant employment connection with Minnesota.”⁸⁹ However, it is not clear an employee who works essentially equal time in Minnesota and another state has a “predominant” connection with Minnesota. This is particularly true when that employee could be a resident of another state working for an out-of-state company.

⁸³ Minn. Stat. § 181.9446.

⁸⁴ Minn. Stat. § 181.9445, subd. 5.

⁸⁵ *Longaker v. Bos. Sci. Corp.*, 872 F. Supp. 2d 816, 819 (D. Minn. 2012), *aff’d*, 715 F.3d 658 (8th Cir. 2013), *see also In re St. Paul & K. C. Grain Co.*, 89 Minn. 98, 120, 94 N.W. 218, 225 (1903) (“It is an elementary rule that statutory law has no extraterritorial effect.”); *In re Pratt*, 219 Minn. 414, 423, 18 N.W.2d 147, 153 (1945) (“The laws of one state of their own vigor have no extraterritorial effect.”).

⁸⁶ *See* Minn. Stat. § 181.9445, subd. 5.

⁸⁷ Minn. Stat. § 181.9446.

⁸⁸ The Department also did not address other potential legal barriers such as dormant commerce clause jurisprudence. *See e.g. Styczinski v. Arnold*, 46 F.4th 907, 913 (8th Cir. 2022) (Commerce Clause precludes the application of a state statute to commerce that takes place wholly outside of the state’s borders, whether or not the commerce has effects within the state.) Because the proposed rule contravenes the language of the statute, consideration of other legal or constitutional barriers is unnecessary. However, given the concerns raised by commentators, the Administrative Law Judges find the lack of this analysis concerning.

⁸⁹ Ex. D at 15.

108. Lastly, the statute requires accrual of ESST of one hour per 30 hours worked, up to a maximum of 48 hours. The statute therefore caps ESST after working 1440 hours, or approximately 69 percent of full-time. An employee can therefore work 30 percent of full-time in another state and still receive the full benefit of the ESST statute. The Department does not explain why it chose a 50 percent threshold rather than the 69 percent figure the legislature found significant.

109. The Department's choice of 50 percent as a threshold is devoid of factual support and therefore arbitrary and capricious.⁹⁰

110. Proposed Rule 5200.1202, subp. 2, contravenes the language of Minn. Stat. §§ 181.9445, subd. 5, and 181.9446 and is arbitrary and capricious. Proposed Rule 5200.1202, subp. 2 is **DISAPPROVED**.

B. 5200.1205 - Employee Use

111. Proposed Rule 5200.1205, subp. 1, clarifies that it is an employee's right to use or not use ESST for absences that qualify for ESST use. Subpart 2 makes clear that if an employee decides not to use their ESST, they will not be covered by the protections of the ESST law.

112. Numerous commenters expressed opposition to Proposed Rule 5200.1205 because they wished to make use of ESST leave mandatory.

113. The Department asserts that it does not have statutory authority to require employees to use ESST leave. The Department is correct. The statute does not require an employee who is absent for a qualifying purpose to use ESST, as compared with, for example, choosing to use a different type of leave, making up the absence by working alternative hours, or simply taking unprotected, unpaid time off that is subject to the employer's customary time and attendance policies.

114. The Department has shown that this rule part is needed and reasonable and it is **APPROVED**.

C. 5200.1208 – Misuse of ESST

115. Proposed Rule 5200.1208 addresses when an employer may request documentation from an employee suspected of misuse of ESST. The proposed rule provides examples of a pattern or clear instance of suspected misuse.

116. The Department modified Proposed Rule 5200.1208, subp. 2, after publication in the *State Register* to add "but is not limited to" before the list of circumstances that qualify as a pattern or clear instance of suspected misuse. This

⁹⁰ *Manufactured Hous. Inst.*, 347 N.W.2d at 244.

addition, which was suggested by a commentor, provides clarity and does not create a substantially different rule within the meaning of Minn. Stat. § 14.05, subd. 2.

117. The Department also modified Proposed Rule 5200.1208, subp. 2, after publication in the *State Register* as follows: “An employer must not deny an employee the use of earned sick and safe time for a qualifying purpose based on previous misuse.” The addition of “for a qualifying purpose” provides necessary clarification on when an employer can deny a request for ESST leave following confirmed misuse and does not create a substantially different rule within the meaning of Minn. Stat. § 14.05, subd. 2.

118. Misuse of ESST was a common concern among commenters. Some commentors expressed support for Proposed Rule 5200.1208 while others argued for stricter policies such as requiring documentation for each use of ESST or allowing employers to deny future ESST requests based on the suspicion of misuse rather than confirmed misuse.

119. Proposed Rule 5200.1208 is consistent with the ESST law and strikes a fair balance between employee’s rights to use ESST for qualifying purposes and an employer’s interests in preventing and investigating misuse. The Department has shown that this rule part is needed and reasonable and it is **APPROVED**.

D. 5200-1209 More Generous Sick and Safe Time Policies

120. Proposed Rule 5200.1209, subp. 1, clarifies Minn. Stat. § 181.9448, subd. 1(a). The statutory provision makes any employer-provided paid time off in excess of the required ESST amount subject to the ESST protections in sections 181.9445, and 181.9447-.9448, except for paid time off that is considered a salary continuation benefit, if the paid time off can be used for absences due to “personal illness or injury.”⁹¹ The proposed subpart confirms that the statutory provision applies ESST protections to this type of paid leave only when the leave is used for a qualifying purpose under the ESST law.

121. Proposed Rule 5200.1209, subp. 2, makes clear that the Minnesota Paid Leave program under Minnesota Statutes, Ch. 268B, which took effect on January 1, 2026, is considered a “salary continuation benefit” within the meaning of Minn. Stat. § 181.9448, subd 1(a).

122. Concerns regarding the impact of ESST on more generous leave policies were the most common topic of comments received on the proposed rules, with many commenters expressing confusion.⁹² The proposed rule, as modified, provides necessary clarification on the scope of the ESST law. While many commenters

⁹¹ Minn. Stat. § 181.9448, subd 1(a).

⁹² See Exs. K6 and I.

expressed a desire for an exemption from the ESST law for more generous leave policies, the Department correctly asserts this would contradict the statutory language.⁹³

123. The Department has shown that this rule part is needed and reasonable and it is **APPROVED**.

Based upon the Findings of Fact and the contents of the rulemaking record, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge has authority and jurisdiction to review these rules under Minn. Stat. §§ 14.14, .15, .50 (2024), and Minn. R. 1400.2100.

2. The Department gave notice to interested persons in this matter and fulfilled its additional notice requirements.

3. The Department has failed to fulfill the procedural requirements of Minn. Stat. §§ 14.116 and 14.131(1), (3). The Department complied with all other procedural requirements of rule and law.

4. The Department's failure to comply with Minn. Stat. §§ 14.116 and 14.131(1), (3), did not deprive any person or entity of an opportunity to participate meaningfully in the rulemaking process. Consequently, this error was harmless.

5. The Department has demonstrated its statutory authority to adopt the proposed rules.

6. Proposed Rule Part 5200.1202, subp. 2, is **DISAPPROVED** because, as described above, it exceeds the Department's statutory authority and is arbitrary and capricious.

7. Due to the disapproval of the Proposed Rule Part 5200.1202, subp. 2, this Report has been submitted to the Chief Administrative Law Judge for her approval pursuant to Minn. Stat. § 14.15, subd. 3.

8. Any Findings that might properly be termed Conclusions, and any Conclusions that might properly be termed Findings, are hereby adopted as such.

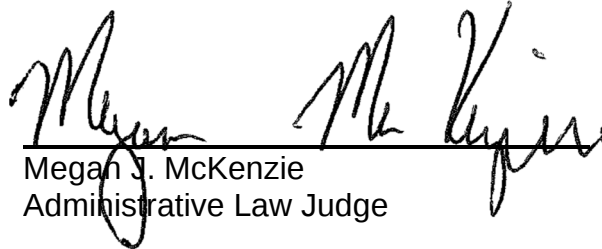
Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

⁹³ Ex. K3 at 14.

RECOMMENDATION

It is recommended that the proposed rules be **ADOPTED** with the exception of Proposed Rule Part 5200.1202, subp. 2, which is **DISAPPROVED**.

Dated: March 20, 2026



Megan J. McKenzie
Administrative Law Judge

NOTICE

The Department must make this Report available for review by anyone who wishes to review it for at least five working days before it may take any further action to adopt final rules or to modify or withdraw the proposed rules. If the Department makes changes in the rules, it must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

Because the Administrative Law Judge has determined that the proposed rules are defective in certain respects, state law requires that this Report be submitted to the Chief Administrative Law Judge for her approval. If the Chief Administrative Law Judge approves the adverse findings contained in this Report, she will advise the Department of actions that will correct the defects, and the Department may not adopt the rules until the Chief Administrative Law Judge determines that the defects have been corrected.

However, if the Chief Administrative Law Judge identifies defects that relate to the issues of need or reasonableness, the Department may either adopt the actions suggested by the Chief Administrative Law Judge to cure the defects or, in the alternative, submit the proposed rules to the Legislative Coordinating Commission for the Commission's advice and comment. If the Department makes a submission to the Commission, it may not adopt the rules until it has received and considered the advice of the Commission. However, the Department is not required to wait for the Commission's advice for more than 60 days after the Commission has received the Department's submission.

If the Department elects to adopt the actions suggested by the Chief Administrative Law Judge and make no other changes and the Chief Administrative Law Judge determines that the defects have been corrected, it may proceed to adopt the rules. If the Department makes changes in the rules other than those suggested by the Administrative Law Judge and the Chief Administrative Law Judge, it must submit copies of the rules showing its changes, the rules as initially proposed, and the

proposed order adopting the rules to the Chief Administrative Law Judge for a review of those changes before it may adopt the rules in final form.

After adopting the final version of the rules, the Department must submit them to the Revisor of Statutes for a review of their form. If the Revisor of Statutes approves the form of the rules, the Revisor will submit certified copies to the Administrative Law Judge, who will then review them and file them with the Secretary of State. When they are filed with the Secretary of State, the Administrative Law Judge will notify the Department, and the Department will notify those persons who requested to be informed of their filing.