

Minnesota Response to COVID-19

As community spread of COVID-19 increases throughout the United States, Minnesota joins the growing list of states that have issued a statewide stay-at-home order. On Wednesday March 25, 2020, Minnesota Governor Tim Walz ordered that all persons currently living within the state of Minnesota are required to stay at home except to engage in activities and critical sector work that are exempted. See *Executive Order 20-20* (order). The order takes effect on Friday, March 27, 2020 at 11:59 p.m. and lasts at least until Friday, April 10, 2020 at 5:00 p.m.. Willful violations of the order are punishable as a misdemeanor pursuant to Minn. Stat. § 12.45.

Following federal CISA guidance with Minnesota specific additions, the order designates certain “essential activities” and “essential businesses” that are exempt from the shutdown order and may remain open, subject to social distancing guidelines. See *CISA Guidelines Identifying Critical Infrastructure during COVID-19*; *Executive Order 20-20*. Businesses and employees that support critical infrastructure sectors are exempt. Further, the order specifically lists some essential businesses that are exempt from the shutdown, including, among others, hardware stores, convenience stores, pharmacies, veterinary clinics, and banks.

EXPANSION OF UNEMPLOYMENT INSURANCE

On March 16, 2020, Minnesota Governor Walz issued *Executive Order 20-05* in an effort to help workers affected by the COVID-19 pandemic have full access to unemployment benefits.

Executive Order 20-05 makes applicants eligible for unemployment benefits if:

- A quarantine or isolation order has been issued by the commissioner for the Department of Health.
- A health care professional or health authority recommended or ordered them to avoid contact with others.
- They have been ordered not to come to their workplace due to an outbreak of a communicable disease.
- They have received notification from a school district, daycare, or other childcare provider that either classes are canceled or the applicant’s ordinary child care is unavailable, provided that the applicant made reasonable effort to obtain other child care and requested time off or other accommodation from the employer and no reasonable accommodation was available.

Further, any unemployment benefits paid as a result of COVID-19 will **not** be used to compute the future unemployment tax rate for an employer. *Executive Order 20-05*.

If an employee’s hours or rate of pay is “substantially reduced,” that individual may be eligible for unemployment benefits. The department has not defined what constitutes a substantial reduction. That said, “unemployed” is defined under Minnesota Statutes as (1) the applicant performs less than 32 hours of work per week; and (2) any earnings with respect to that week are less than the applicant’s weekly unemployment benefit amount. Minn. Stat. § 268.035, subd. 26.

Generally, the benefit amount is approximately 50 percent of wage, subject to a cap of \$740 per week. For example, if an employee made \$1,000 per week in wages, he/she would receive \$500 per week in unemployment benefits if he/she is completely unemployed. That means the employer could reduce the employee’s hours to 32 hours per week and pay the employee a minimum of \$500 per week and that would not trigger unemployment benefits.

Further, an applicant is not entitled to unemployment for any week in which he/she is eligible to receive or has received vacation, sick time, or PTO. Minn. Stat. § 268.085, subd. 3. However, this does not apply if there is a permanent separation of employment. *Id.*



Samuel E. Mogensen

Associate

smogensen@cozen.com
Phone: (612) 260-9064
Fax: (612) 260-9080

Related Practice Areas

- Labor & Employment

STATE AND LOCAL SICK PAY LAWS

The state of Minnesota does not have a law that requires employers provide employees with sick leave benefits, either paid or unpaid. If an employer chooses to provide sick leave benefits, it must comply with the terms of its established policy or employment contract. See https://www.dli.mn.gov/sites/default/files/pdf/sick_leave.pdf. However, an employer in Minnesota may still be required to provide an employee **unpaid** sick leave in accordance with the Family and Medical Leave Act (FMLA) or the Minnesota Pregnancy and Parental Leave Law.

In addition, three of Minnesota's largest cities have paid sick leave ordinances: Minneapolis, St. Paul, and Duluth.

Minneapolis

The Minneapolis Sick and Safe Time Ordinance covers employees who have worked at least 80 hours in a calendar year within the *boundaries of Minneapolis*. Employers must provide at least 48 hours of paid sick and safe time (SST) to an eligible employee. The employee may bank unused SST up to 80 hours for subsequent years.

If the employer has a vacation or PTO policy that provides for the same amount or more time equal to the SST, that policy will qualify and no additional time must be given under the ordinance.

For COVID-19-related absences, the employee may use SST.

St. Paul

The St. Paul Earned Sick and Safe Time Ordinance applies to employers that have at least one employee who physically works in St. Paul. Similar to the Minneapolis ordinance, the employer must provide at least 48 hours of paid SST to an eligible employee. The employee may bank unused SST up to 80 hours for subsequent years.

If the employer has a vacation or PTO policy that provides for the same amount or more time equal to the SST, that policy will qualify and no additional time must be given under the ordinance. An employee may use SST for COVID-19-related absences.

Duluth

The Duluth Earned Sick & Safe Time Ordinance applies to employers whose workers spend 50 percent of their work time in Duluth. All employers with five or more employees must provide SST to their employees working in Duluth. SST can be used by employees in order to care for themselves or a family member in situations involving illnesses (including COVID-19), injuries, physical or mental health conditions, domestic violence, sexual assault, or stalking.

CONCLUSION

The response to the COVID-19 outbreak is constantly changing as state governments move to protect their citizens. Minnesota employers and employees need to stay up-to-date on the response in order to continue operating efficiently during these uncertain times.
