

MICHIGAN’S EARNED SICK TIME ACT: AT-A-GLANCE GUIDANCE

Background

In 2018 two citizen initiatives submitted proposed ballot language to (1) require Michigan employers to provide paid sick time to all employees and (2) increase the minimum wage while gradually eliminating the tip credit. Both ballot initiatives received enough signatures to be placed before the Michigan legislature. The legislature had the options of adopting the ballot initiatives and making them law, doing nothing with the initiatives which would place them on the November ballot for citizens to vote on, or putting a competing initiative on the November ballot for citizens to consider. Polling showed that these initiatives would pass if they were sent to the ballot and if passed by citizen vote, would require a super-majority to amend (which is difficult to achieve). As a result, the legislature decided to adopt the ballot initiatives outright – making them law - and then proceeded to make amendments to them before their effective dates, which only required a simple majority vote to accomplish. The amended version of paid sick leave that took effect in early 2019 was the Paid Medical Leave Act, which only applied to employers with 50+ employees. The minimum wage table that was enacted was less aggressive than what the original ballot language called for and it kept the tip credit in place.

On July 31, 2024, the Michigan Supreme Court ruled 4-3 that the state legislature did not have the constitutional authority to adopt a citizen’s ballot and then amend that ballot language in the SAME legislative session. As a result, the 2018 Paid Medical Leave Act (PMLA) and current minimum wage increase schedule were ruled invalid.

Employers will now have to comply with the original 2018 ballot language governing minimum wage and paid sick time. This document focuses on the paid sick leave provisions, known as [the Earned Sick Time Act \(ESTA\)](#)¹. The ESTA is much broader in scope than the Paid Medical Leave Act and more generous in the accrual calculation. Given the significant disruption this change is expected to cause in the business community, the Michigan Supreme Court set a future effective date of February 21, 2025, rather than making their decision effective immediately. There are [advocacy efforts underway currently](#)², urging the legislature to amend the more confusing and harmful aspects of the ESTA before it goes into effect. Currently both the [Michigan House and Senate have drafted amendment bills](#), but it’s anyone’s guess as to whether these efforts will be successful.

¹ <https://legislature.mi.gov/documents/2017-2018/initiative/pdf/MITimeToCareFINAL.pdf>

² <https://www.michamber.com/news/update-on-paid-leave-minimum-wage-activities/>

HRM Services, LLC continues to follow these developments and will provide additional guidance as it becomes available. Be sure to check [our website](#) and subscribe to our HR Hot Topics videos to stay informed.

Key Elements of ESTA

Who is affected by this?	ALL employers doing business in the state of Michigan (or those who have employees working in Michigan), regardless of size, will be required to offer paid sick time to ALL employees, regardless of status. The United States Government is the only employer exempted under this Act.
What if we have employees covered under a collective bargaining agreement?	Employers with CBAs will need to comply with the provisions in this Act in all CBAs renewed or entered into after the effective date of 2/21/25. Until then, employers with current CBAs can follow their current rules.
Which employees are eligible to accrue sick time?	ALL employees regardless of status or hours worked. This includes full-time, part-time, hourly, salary, temporary and seasonal. LEO guidance indicates that they will use “the economic reality test to determine whether an individual is an employee”, which would exclude independent contractors and vendors from eligibility.
How will sick time accrue?	Employees will earn one hour of paid sick time for every 30 hours worked . There is no cap on the amount of sick time an employee can earn in a week, month or year. Employees working fewer hours will accrue at slower rates, but every employee will be eligible to accrue paid sick time.
What constitutes ‘hours worked’?	For the purposes of calculating ‘hours worked’, employers may exclude holidays, vacation time/PTO, and leaves of absence.
How do we calculate hours for exempt/salary employees?	Exempt employees would accrue based on an assumed 40-hour work week, unless the employee’s normal work schedule is less than 40-hours. In those cases, employers would adjust the accrual to match the reduced hours expectation.
When does sick time accrual begin?	No later than the effective date of this Act, 2/21/25, and upon hire thereafter.
When can an employee begin using their earned sick time?	As soon as it is accrued. However, employers can choose to impose an initial 90-day waiting period before use.
How much earned sick time can an employee use?	Employees can use up to 72 hours of earned sick time per year, assuming they have accrued at least that amount. Employers with 9 or less employees can award the first 40 hours as PAID time off and the remaining 32 hours as UNPAID time off. Employers with 10 or more employees must award all 72 hours as PAID time off.
How is the 10-employee threshold calculated?	An employer meets the 10-employee threshold if it employs 10 or more employees in 20 or more workweeks in the current or previous calendar year. The 20 workweeks need not be consecutive. (This includes full-time, part-time, and temporary employees including those provided through a temporary service or staffing agency or similar entity.)

	Once an employer meets the 10 or more-employee threshold, the employer will remain covered until the remainder of the current and following calendar year.
How is a 'year' calculated for the purposes of accrual and use?	Employers can define 'year' as any regular consecutive twelve-month period, i.e.: calendar year, anniversary year, fiscal year, etc.
Can we frontload sick time banks at the start of the 'year'?	Yes. There is no prohibition preventing an employer from providing the total amount of sick time at the beginning of the 12-month period so long as the accrual amount calculated is accurate and all other provisions of the Act are followed.
Can unused sick time roll over from one year to the next?	Yes. Employers must allow employees to rollover any unused earned sick time from one year to the next. There is no cap on the amount of unused time that can rollover. There is only a cap on the number of hours and employee can USE each year.
Do we have to pay out for unused sick time?	No. There is no requirement that an employer pay out for unused sick time.
How do I calculate sick time for rehires?	If an employee is rehired by the same employer within 6 months of the separation, they are entitled to all previously accrued, unused sick time and must be permitted to use and accrue additional sick time upon reinstatement.
What can an employee use sick time for?	<p>Employees can use earned sick time for any of the following reasons:</p> <ul style="list-style-type: none"> (a) The employee's mental or physical illness, injury or health condition; medical diagnosis, care or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee. (b) For the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care or treatment of the employee's family members' mental or physical illness, injury or health condition; or preventive medical care for a family member of the employee. (c) If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault. (d) For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; or (e) For the closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the

	employee's or family member's exposure to a communicable disease, whether or not the employee or family member has actually contracted the communicable disease.
Who is considered a 'family member' for approved uses of sick time?	'Family member' includes all of the following: (a) Biological, adopted or foster child, stepchild, or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis. (b) Biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child. (c) A person to whom the employee is legally married under the laws of any state or a domestic partner. (d) A grand parent. (e) A grandchild. (f) A biological, foster or adopted sibling. (g) Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.
In what increments can an employee use their sick time?	Employees must be allowed to take accrued sick time in the smallest increment of time the employer's payroll/timekeeping system can track – not to exceed 1-hour increments.
How much advanced notice is required for an employee to use earned sick time?	If the need for sick time is foreseeable, the employer can require up to seven (7) days advanced notice. If the need is not foreseeable the employee must inform the employer 'as soon as practicable'. This may require employers to revise existing notice/call-in policies.
Can we require documentation for sick time absences?	Only for absences that are more than 3 consecutive days in length. Employers cannot require documentation for intermittent use of less than 3 consecutive days. If there is an out-of-pocket cost for obtaining the requested documentation, the employer is responsible for paying the fee.
Can we apply our point system or discipline employees for using earned sick time?	No. Employees cannot be disciplined or in any way retaliated against for using their accrued sick time as outlined in the Act.
If we already offer paid time off, do we need to create a separate sick bank to comply with this law?	No. However, your current paid time off policies must provide paid leave in at least the same amounts, for the same purposes and under the same conditions as outlined in this Act to be considered in compliance. Unless employers want to subject ALL paid time off to these rules, it may be smart to carve out a separate bank of time to meet these requirements and keep the remaining time off you award subject to your current policies.
Do we have to notify employees of this change to earned sick time?	Yes. Employers must provide written notice to current employees and all new hires outlining the following: (a) The amount of earned sick time required to be provided to an employee under this Act. (b) The employer's choice of how a 'year' will be calculated. (c) The terms under which earned sick time can be used. (d) A prohibition on retaliation for an employee's rights under this Act.

	<p>(e) The employee’s right to bring a civil action or file a complaint with the department (State of Michigan) for any violation of this Act.</p> <p>Notices must be written in English, Spanish and any other language spoken by at least 10% of the employer’s workforce.</p>
What are the recordkeeping requirements for ESTA?	Employers must retain records documenting the hours worked and earned sick time taken by the employee for at least three (3) years.
Do we have to update our employment law posters because of this change?	Yes. The invalidation of the PMLA and the new ESTA language (along with the changes to the minimum wage) will require employers to update their existing employment law posters. LEO’s Wage and Hour Division has created a poster for ESTA that can be downloaded free of charge. Michigan Chamber of Commerce also has updated posters that can be purchased: https://www.michamber.com/publicationsstore/ .
What recourse do employees have if they feel their rights under ESTA are being violated?	Employees can file a civil lawsuit against their employer or file a claim with the Michigan Department of Labor and Economic Opportunity’s Wage and Hour Division, which will result in an investigation into the claim. Employees are not required to file a claim with the department before filing a civil lawsuit.
What is the penalty if an employer is found noncompliant with the provisions of this Act?	The ‘cost’ of noncompliance is steep and can include any/all of the following: Civil remedies penalties, fines, court fees, liquidated damages, attorney fees, payment of earned sick time that was improperly withheld, backpay, and/or reinstatement of employment in case of job loss.

This document was created by HRM Services to aid in employer compliance with the ESTA and is not meant to be used as legal advice.

QUESTIONS



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