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

UPDATE ON 2/26/25

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.

As a result of this ruling, employers would be required to comply with the original 2018 ballot language governing minimum wage and paid sick time. This language was administratively burdensome, costly and overly restrictive in nature, leading advocates to push the current legislature for amendments prior to the effective date. On February 21, 2025 (the effective date established in the MI Supreme Court ruling), the Michigan legislature reached a bi-partisan compromise amending various provisions of both the Earned Sick Time Act (ESTA) and the minimum wage law. This document focuses on the paid sick leave provisions[1].

[1] https://www.legislature.mi.gov/documents/2025-2026/billenrolled/House/pdf/2025-HNB-4002.pdf

Key Elements of ESTA

Who is affected by this?	**ALL** employers who have employees working in Michigan, regardless of size, will be required to offer paid sick time to **MOST** employees, regardless of status. The United States Government, railway workers, and employers covered by the Railroad Unemployment Insurance Act (RUIA) are preempted from coverage under the Earned Sick Time 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, unless their current CBA is silent on sick leave. See LEO guidance for more information.
Which employees are eligible to accrue sick time?	**MOST** employees (physically working in MI) regardless of status or hours worked. This includes full-time, part-time, hourly, salary, temporary and seasonal. The Department of Labor and Economic Opportunity (LEO) guidance indicates that they will use "the economic reality test to determine whether an individual is an employee", which would exclude most independent contractors and vendors from eligibility. Additionally, the following types of employees are excluded from ESTA: • Those working in accordance with a policy that allows the individual to schedule his/her own hours and has a policy that prohibits the employer from taking adverse personnel action if the individual does not schedule a minimum number of working hours; • Unpaid trainees or unpaid interns; and • Individuals employed in accordance with the Youth Employment Standards Act, MCL 409.101-.124.
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 accrue in a week, month or year. Employees working fewer hours will accrue at slower rates, but almost every employee will be eligible to accrue paid sick time (see exceptions noted above).
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 and upon hire thereafter. • Effective date for employers with 11+ employees: 2/21/25 • Effective date for employers with 10 or less employees: 10/1/25 • Effective date for NEW employers that did not employ an employee on or before 2/21/22: 3 years after the first employee's date of hire

When can an employee begin using their earned sick time?	As soon as it is accrued. However, new employees hired after the effective date of this act can be subjected to a 120-day waiting period before accessing accrued sick time (optional or can have a reduced waiting period based on employer choice). **Employers choosing to frontload sick time must allow for immediate access – no waiting period is allowed for frontloaded policies.**
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 10 or less employees can limit annual usage to 40 hours per 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. If frontloading, employers can load the annual usage allotment (72 hours/40 hours based on employer size) for full-time employees. If an employee becomes eligible for leave time after the start of the benefit year, annual amounts can be prorated. Part-time employees can have their annual allotment prorated based on projected work schedule for the year IF: • (1) the employer provides the employee with a written notice of the estimated hours s/he is expected to work for a year at the time of hire; • (2) the amounts of earned sick time frontloaded must be proportional to the time the employee would accrue if s/he worked all expected hours; and • (3) the employer must provide additional time if the employee works more hours than expected.
Must unused sick time roll over from one year to the next?	It depends. If employers are using a frontloaded system (as described above), carry over of unused hours is not required. If employers are using an accrual system, then employees must be allowed to carry over unused sick time hours up to 72 hours max (40 hours max for small employers), UNLESS the employer chooses to pay out for unused hours at the end of the benefit 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. However, an employer can choose to pay out for unused sick time if they wish.
If I frontload sick leave, can I recoup leave time that was used above and beyond what would have been accrued at the time of separation?	Yes. An employer may determine the amount that would have been accrued as of the date of separation and recoup the value of leave used more than the employee's adjusted leave balance, provided that this deduction does not reduce the final paycheck to less than minimum wage and the employer obtained a prior written, voluntary agreement for the deduction.
How do I calculate sick time for rehires?	If an employee is rehired by the same employer within 2 months of the separation date, they are entitled to all previously accrued, unused sick time and must be permitted to use and accrue additional sick

	time upon reinstatement UNLESS the employer paid out the unused sick time hours at the time of separation. If the employer paid out unused sick time upon separation, accrual begins from scratch at the time of rehire.
What can an employee use sick time for?	Employees can use earned sick time for any of the following reasons: (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?	The default usage for sick time is in 1-hour increments. The employer can't require usage in increments larger than this. However, the employer can choose to allow for a smaller increment – down to the smallest increment the employer uses to account for "absences or use of other time."
How much do I have to pay an employee when they are using sick time?	Employees must be paid a rate equal to the greater of either their normal hourly wage/base wage or the state minimum wage. Employers are not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips or gratuities in the calculation of an employee's normal hourly wage/base wage.
How much advanced notice is required for an employee to use earned sick time?	Foreseeable events: Can require up to 7 days advanced notice. Unforeseeable events: May require the employee to give notice in either of the following manners: • As soon as practicable **or** • In accordance with the employer's policy on requesting/using sick time or leave IF (a) on the date of hire, or the effective date of HB 4002, whichever is latest, employer provides the employee with a written copy of the policy that includes procedures for how the employee must provide notice and (b) that notice requirement allows the employee to provide notice after the employee is aware of the need for the EST. An employer requiring notice for sick time that is not foreseeable "shall not deny an employee's use of earned sick time that is not foreseeable if…the employer did not provide a written policy to the employee…[and/or]…the employer made a change…and did not provide notice of the change within 5 days after the change."
Can an employee no-call, no-show for three days without recourse?	Generally, no except under extreme circumstances. For example, the employee is incapacitated and unable to give notice. The employee must provide notice as soon as practicable. The employee may be disciplined following employer's policy and procedures.
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. Employees have 15 days to produce requested documentation.
Can we apply our point system or discipline	No. Employees cannot be disciplined or in any way retaliated against for using their accrued sick time as outlined in the Act. However, employers CAN enforce disciplinary procedures for employees who

employees for using earned sick time?	fail to follow an employer's notice provisions and/or use sick time for purposes other than those approved by the Act.
If we already offer paid time off, do we need to create a separate sick bank to comply with this law?	No. The revised version of ESTA allows existing paid time banks to be in compliance with this law if it: • (1) provides the employees with PTO not less than the same amounts of time off as provided under ESTA (72/40 hours) and (2) may be used for a purpose described under the act OR any other purpose. The employer is not required to allow an employee to use PTO for a purpose described in ESTA in an amount that exceeds the amount of time off provided under the act. • LEO's FAQ also says, "If my employer created a combined bank of time that includes PTO, Vacation and Sick. Am I entitled to more sick time if I used all my time on vacation? No, if the employer has provided you with time to use as PTO, Vacation or sick, and they have met the accrual minimums for ESTA, you are not entitled to more time."
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 **within 30 days of the effective date**, 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) That retaliatory personnel action taken against an employee for request or using earned sick time is prohibited. (e) The employee's right to file a complaint with the Department (LEO) for any violation of this Act. Notices must be written in English, Spanish and any other language spoken by at least 10% of the employer's workforce.
What are the recordkeeping requirements for ESTA?	Employers "shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees" and give the State access to those records "with appropriate notice and at a mutually agreeable time."
Do we have to update our employment law posters because of this change?	Yes. 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 from their website. 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 claim with the Department of Labor and Economic Opportunity (LEO) within 3 years of a violation.
What is the penalty if an employer is found	There are civil remedies afforded to affected employees. An employer who fails to provide earned sick time is subject to a $1,000 administrative fine, and potentially an additional civil fine up to 8

noncompliant with the provisions of this Act?	times the employee's normal hourly wage. An employer who willingly violates the posting requirement is subject to a $100 administrative fine for each separate violation.

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. The information contained herein is subject to change.

QUESTIONS

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