

# **Michigan Earned Sick Time Act (ESTA): Significant Changes to Paid Sick Time**



MICHIGAN  
**Home Care  
& Hospice**  
ASSOCIATION

Terence P. Durkin, Attorney

May 7, 2025

# **Michigan Earned Sick Time Act (ESTA): Significant Changes to Paid Sick Time**

These materials have been prepared by Kitch Attorneys & Counselors, PC for informational purposes only and are not legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. Readers should not act upon this information without seeking professional counsel. Photographs, articles, records, pleadings, etc., are for dramatization purposes only.

# Key Points

- ◆ Change Is Here.
- ◆ Best Practices.
- ◆ Review Your Policies.
- ◆ Keep Up-To-Date.





# Background

- ◆ 2018: Paid sick leave requirements under the Michigan Earned Sick Time Act and minimum wage law ballot initiatives sent to Michigan legislature.
- ◆ The legislature adopted the measures intact, resulting in their removal from the ballot for the 2018 election.
- ◆ Following election and within the **same** legislative session, the legislature amended both laws that became effective in 2019.
- ◆ Mothering Justice, a labor advocacy organization, along with other groups, filed suit to challenge the constitutionality of the state legislature's actions.



# Background

- ◆ July 31, 2024: Michigan Supreme Court ruled that the Michigan state legislature's 2018 adoption and amendment procedural action to the ESTA and minimum wage laws were unconstitutional.



# Michigan Paid Leave Act

- ◆ 50 or more employees.
- ◆ All employees except:
  - ◆ Collectively bargained employees,
  - ◆ Employees who work less than 25 hours per week on average in the preceding calendar year, and
  - ◆ Employees exempt from overtime under the FLSA.
- ◆ Accrual: one hour or paid sick leave for every 35 hours worked, up to 40 hours per year.
- ◆ Carryover: up to 40 hours per year.
- ◆ Must be used in one-hour increments.
- ◆ No specific unlawful retaliation or unlawful interference.
- ◆ Retain records for one year
- ◆ Not required to reinstate unused sick leave upon rehire or pay upon separation from employment.
- ◆ Claims filed with the Michigan Department of Licensing and Regulatory Affairs.



# Paid Sick Leave (ESTA)

- ◆ Amended Earned Sick Time Act (ESTA).
- ◆ More clarity and flexibility.
- ◆ Took effect **February 21, 2025**.
- ◆ 30 days to provide written notice.





# Who is Covered by ESTA?

- ◆ All Michigan employers with 1 or more employees.
- ◆ Employers with 50 or less employees will no longer be exempt from having to provide paid sick leave.
- ◆ Small businesses without an employee on or before February 21, must comply 3 years after first employing an employee.
- ◆ Small businesses [fewer than 10 employees] have until October 1, 2025, to be in compliance with the Act.





# Employer

- ◆ Employer is any person, firm, business, educational institution, corporation, limited liability company, government entity, or other entity that employs one or more individuals.
- ◆ Nonprofit agency stricken from definition.
- ◆ Employer does not include the United States government.



# Employer (Cont'd)

- ◆ Small Business: 10 or fewer employees.
- ◆ Large Business: More than 10 employees.
  - ◆ More than 10 employees in 20 or more workweeks in the current or immediately preceding calendar year.
  - ◆ 20 workweeks need not be consecutive.
  - ◆ Remain covered through the remainder of the current and following calendar year.



# Employee

- ◆ Employee is defined as an individual engaged in service to an employer in the business of the employer.



# Employee (Cont'd)

- ◆ Salaried – both exempt and non-exempt.
- ◆ Full and Part-time hourly workers.
- ◆ Temporary workers including those provided through a temporary service or staffing agency or similar entity.





# Employee Exceptions

## ◆ Exceptions:

- ◆ Those employed by the United States government.
- ◆ Individuals who work in accordance with a policy provided:
  - Individual allowed to set schedule for working hours
  - Prohibits employer from taking adverse action against the individual who does not schedule a minimum number of working hours.



# Employee Exceptions (Cont'd)

- ◆ Unpaid trainees and unpaid interns.
- ◆ An individual employed in accordance with the Youth Employment Standards Act, 1978 PA 90.



# ESTA and Location of Employee/Employer

- ◆ ESTA applies to work performed by employees who are **physically** located in Michigan, regardless of where the employer is located.



# Accrual Amount

- ◆ Minimum of 1 hour of earned sick time for every 30 hours worked.
- ◆ Small Businesses: 40 hours of paid earned sick time.
- ◆ Large Businesses: 72 hours of paid earned sick time.
- ◆ Employer may allow more than 40 or 72 hours to be accrued and used.





# Accrued Hours

- ◆ When available to use?
  - ◆ Immediately if currently employed.
  - ◆ May wait until 120<sup>th</sup> day if hired on or after February 21, 2025.
- ◆ Used in 1-hour increments or the smallest increment used to account for absences or use of other time.
- ◆ No requirement to pay out accrued earned sick time.



# Frontloading

- ◆ Permitted as an alternative to the accrual method.
- ◆ Small businesses at least 40 hours.
- ◆ Large businesses at least 72 hours.
- ◆ Prorated on date individual becomes eligible during the benefit year.



# Carry Over

- ◆ Frontloading

- ◆ Employer does not have to allow accrued and unused hours to carry over to the next benefit year, calculate and track accrual, or pay the value of unused sick time.

- Accrual Method

- Carry over up to 40 hours or 72 hours.
- Must calculate and track accruals.



# Uses for Earned Sick Time

- ◆ Employee's or employee's family member'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 or employee's family member.





# Uses for Earned Sick Time

- ◆ Employee or employee's family member who is a victim of domestic violence or sexual assault, the 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.



# Uses for Earned Sick Time

- ◆ 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.



# Uses for Earned Sick Time

- ◆ For 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





# Uses for Earned Sick Time

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 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.





# Uses for Earned Sick Time

- ◆ An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.



# Advance Notice

- Foreseeable: not to exceed 7 days prior to the begin date.
- Not foreseeable:
  - As soon as practicable or
  - In accordance with the employer's policy on requesting/using sick time or leave if
    - (1) Provide written copy of the policy
    - (2) Allows employee to provide notice after the employee is aware of the need for the earned sick time.



# Documentation

- ◆ May require reasonable documentation after more than three consecutive days off.
- ◆ If requested, employee must provide the documentation in not more than 15 days after employer's request.
  - ◆ Should not include a description of the illness or details of the violence.
  - ◆ Employer responsible for paying all out-of-pocket expenses to obtain the documentation.
  - ◆ Employer cannot delay commencement of the leave based on a failure to receive documentation.



# Abuses

- ◆ “An employer may take adverse personnel action against an employee if the employee uses earned sick time for a purpose other than a purpose described [under the act]...or violates the notice requirement under this act.”





# Employee Rights

- ◆ Employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.
- ◆ Employer shall not retaliate or discriminate for exercising a right protected under this act.
- ◆ Absences may not lead to retaliatory personnel action.



# Complaints

- ◆ File any time within 3 years of the alleged violation.
- ◆ Enforced by Department of Labor & Economic Opportunity.
- ◆ Penalties: liable for a civil fine of not more than eight times the employee's normal hourly wage.
- ◆ Removes rebuttable presumption and private right of action.



# Posters and Notice

- ◆ Posters and written notice:
  - ◆ Amount of EST required to be provided under this act.
  - ◆ Employer's choice of how to calculate a "year."
  - ◆ Terms EST can be used.
  - ◆ No retaliation.
  - ◆ Employee's right to file complaint with the department.



# Other Requirements

- ◆ Notice in English, Spanish and any language that at least 10% spoken in the workforce.
- ◆ Display poster





# Retention of Records

- ◆ Unclear because provisions are not included. ◆
- ◆ Previous provisions: not less than 3 years:
  - ◆ Hours worked.
  - ◆ EST taken by employees.



# Collective Bargaining Agreements (CBA)

- ◆ Postpones effective date of ESTA for employees covered by a CBA that conflicts with the Act.
- ◆ The effective date is the expiration of the current CBA.
- ◆ Employers who participate in a multiemployer CBA and contribute to a multiemployer paid sick leave plan are in compliance with ESTA.



# QUESTIONS



MICHIGAN ASSOCIATION FOR  
**Home Care**

# Take Away

- ◆ Change Is Here
- ◆ Best Practices.
- ◆ Review Your Policies.
- ◆ Keep Up-To-Date.





# THANK YOU

Terence P. Durkin  
313.965.6971  
[Terence.Durkin@kitch.com](mailto:Terence.Durkin@kitch.com)



MICHIGAN ASSOCIATION FOR  
**Home Care**

# The End



MICHIGAN  
HomeCare  
& Hospice  
ASSOCIATION