

Last-Minute Changes to Michigan's Earned Sick Time Law: What Employers Need to Know

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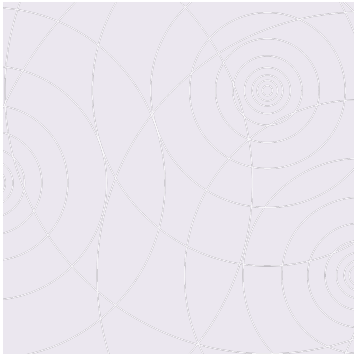
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Takeaways

- Changes to eliminate, modify or clarify certain provisions of the Michigan ESTA were signed by the governor on 2/21/25 and became effective immediately. The law requires most Michigan employers to permit employees to accrue and use paid earned sick time annually.
- Under the amended ESTA, paid earned sick time begins to accrue as of 2/21/25. Small businesses have until 10/1/25 to start providing 40 hours of sick time and may cap usage at 40 hours in one year. All other employers may cap usage at 72 hours in one year.
- Employers should review the changes and take immediate steps to comply with the amended ESTA.

Related link

- [Michigan Supreme Court Invalidates Legislative Amendments to Minimum Wage, Paid Sick Leave Measures](#)

Article

After the [Michigan Supreme Court's opinion in *Mothering Justice v. Attorney General and State of Michigan*](#), No. 165325 (July 31, 2024), Michigan's Earned Sick Time Act (ESTA), which expanded employee paid sick time rights, was set to take effect on Feb. 21, 2025, late on Feb. 20, 2025, a bill was passed to amend the ESTA. The amended ESTA became effective at 12:02 a.m. on Feb. 21, 2025, and was signed by Governor Gretchen Whitmer later that morning.

The amended ESTA still requires most Michigan employers to permit employees to accrue and use paid earned sick time annually. However, the amended ESTA removes certain rebuttable presumptions that an employer had violated the ESTA and eliminates an employee's right to file a private cause of action for a violation of the ESTA, all of which were in the previous version of the ESTA.

The amended ESTA also modifies or clarifies certain provisions of the ESTA, and there are key changes employers should be cognizant of to ensure compliance with the amended law.

Key Changes in Amended ESTA

Scope

The definition of "employee" was modified to exclude:

1. An individual employed by the U.S. government;

Related Services

Disability, Leave and Health
Management

2. An unpaid trainee or unpaid intern;
3. An individual employed in accordance with the Youth Employment Standards Act;
and
4. An individual who works in accordance with a policy of an employer if:
 - (a) The policy allows the individual to schedule the individual's own working hours;
and
 - (b) The policy prohibits the employer from taking adverse personnel action against the individual if the individual does not schedule a minimum number of working hours.

Accrual of Earned Sick Time

Employees must accrue one hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off.

Small employers (defined as an employer with up to 10 employees on payroll during at least 20 calendar workweeks in either the current or preceding calendar year) may cap usage of paid earned sick time at 40 hours in one year.

All other employers may cap usage of paid earned sick time at 72 hours in one year.

Frontloading

As an alternative to the accrual of paid earned sick time, an employer may provide an employee not less than 72 hours of paid earned sick time (40 hours for small employers) at the beginning of the year for immediate use. If earned sick time is frontloaded, employers are not required to:

1. Allow an employee to carry over any unused paid earned sick time;
2. Calculate and track an employees' accrual of paid earned sick time; or
3. Pay out unused accrued paid earned sick time at the end of the year in which the time was accrued.

"Use-it-or-lose-it" applies if time is frontloaded.

Carryover

Unlike the original ESTA, unlimited carryover of unused paid earned sick time is not required under the amended Act. Under the amended ESTA, employers may cap carryover of unused paid earned sick time at 72 hours (40 hours for small businesses).

Waiting Period

Employees hired after Feb. 21, 2025, can be required to wait 120 days after beginning employment before using accrued paid earned sick time.

Notice Requirements

If the need for paid earned sick time is foreseeable, employers can require up to seven days' advanced notice.

If unforeseeable, employers may require employees to give notice either:

1. As soon as practicable; or

2. In accordance with the employer's policy on using sick time, if:
 - (a) The employer notifies the employee of their policy in writing after Feb. 21, 2025;
and
 - (b) The policy allows employees to provide notice after the employee is aware of the need to use sick time.

Employers can require "reasonable documentation" for paid earned sick time of more than three consecutive days. Employers must give employees not more than 15 days to provide such documentation upon request and are required to pay all out-of-pocket expenses the employee incurs to obtain that documentation.

Unlike the original version of the ESTA, the amended ESTA permits employers to take adverse personnel action if employees use paid earned sick time for a purpose other than one allowed under the Act.

Usage Increments

Paid earned sick time can be used in either one-hour increments or the smallest increment the employer uses for absences.

Rate of Paid Sick Time

Employees using paid earned sick time must be paid at a rate equal to the greater of either the normal hourly or base wage for that employee, or the established minimum wage. Employers are not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities in calculating a normal hourly wage or base wage.

No Payout Upon Separation

Like the original ESTA, the amended ESTA does not require payout of accrued, unused paid earned sick time upon the employee's separation from employment.

No Retaliation

The amended ESTA prohibits an employer, or any other person, from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right protected under the ESTA. It also prohibits an employer from taking retaliatory personnel action or discriminating against an employee because the employee has exercised a right under the ESTA.

Removal of Rebuttable Presumption

The amended ESTA removed the rebuttal presumption of a violation of the ESTA if an employer took an adverse personnel action against a person within 90 days after that person engaged in certain protected activities under the ESTA.

No Private Right of Action

Unlike the original ESTA, the amended ESTA does not provide employees a private cause of action.

Required Posters and Notice

Employers have 30 days from Feb. 21, 2025, to post posters consistent with the amended ESTA and provide written notice to employees as required by the ESTA.

The Department of Labor and Economic Opportunity is required to create and make available to employers notices and posters for employers' use in complying with the amended ESTA. The Department is required to provide the notices and posters in English, Spanish, and any other language deemed appropriate by the Department. Posters reflecting the amendments to the ESTA, however, are not currently available.

Takeaways

Under the amended ESTA, paid earned sick time begins to accrue as of Feb. 21, 2025. Small businesses have until Oct. 1, 2025, to start providing 40 hours of sick time. New businesses with up to 10 employees have a three-year grace period after forming.

Employers should take immediate steps to comply with the ESTA. Please contact a Jackson Lewis attorney if you have any questions or need assistance to ensure compliance with the ESTA.

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