



## FREQUENTLY ASKED QUESTIONS: MICHIGAN'S EARNED SICK TIME ACT 2.0

*This FAQ was prepared by the Michigan Chamber to help members and employers comply with Michigan's Earned Sick Time Act (ESTA) as amended on Feb. 21, 2025 ([House Bill 4002](#), now Public Act 2 of 2025).*

*This document is intended to convey general information only.  
It should not be relied on as legal advice or opinion.*

*Last updated: 2/21/25*

Link to Michigan Department of Labor and Economic Opportunity Guidance FAQs [here](#)

### **Q. How did this happen?**

**A.** The Michigan Supreme Court ruled on July 31, 2024, that two 2018 ballot initiatives to increase the state's wage and mandate paid sick leave requirements for employers should be put into effect — despite never being voted on by the people — saying the strategy the Michigan Legislature used to adopt alternative legislation violated the Michigan Constitution. The Court ordered the ballot language on both issues to take effect on Feb. 21, 2025. Squeaking in under the deadline, the Michigan Legislature sent changes to the Earned Sick Time Act (ESTA) (HB 4002) and minimum wage law (SB 8) to the Governor's desk and she signed the bills on Friday, Feb. 21 as Public Acts 1 and 2 of 2025, with an effective date of Feb. 21 at 12:02 a.m. The Michigan Chamber has been a steadfast leader in pushing changes to soften the blow to businesses through the legislative process and working to amplify the voices of thousands of members of every size and industry from across the state who contacted their lawmakers about the very real implications.

### **Q. Does my business need to comply with the new law? And, if so, when?**

**A.** The Act, which took effect at 12:02 a.m. on Feb. 21, 2025, applies to all employers, regardless of size. "Employer" is defined as "any person, firm, business, educational institution, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals. Employer does not include the United States government." After HB 4002 was passed, there was some speculation that nonprofits might be exempt but that has proven to not be the case; however, it does specify "If a small business did not employ an employee on or before February 21, 2022, the small employer is not required to comply with this act until 3 years after the date the employer first employs an employee."

The LEO FAQ<sup>1</sup> says this:

- All Michigan employers that have one or more employee(s), excluding employees of the United States Government.
- New businesses: Small businesses that did not employ an employee on or before February 21, 2022, the small business is not required to comply with this act until 3 years after the date that the employer first

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<sup>1</sup> The MI Department of Labor & Economic Opportunity's (LEO) FAQ can be found at <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/frequently-asked-questions--faqs>

employs an employee. Example: Jordan started a small business in October 2024, he employs 2 employees. His employees would begin to accrue earned sick time October of 2027.

- Exclusion based on Federal Law: Railway workers and employers covered by the Railroad Unemployment Insurance Act (RUIA) are preempted from coverage under the Earned Sick Time Act.”

**Q. For what purposes may an employee use sick time?**

**A.** The ESTA goes beyond what many employers include under their sick leave policies today. While we encourage you to review the language in the ESTA (link above), it allows employees to sick leave for any of the following: (1) Physical or mental illness, injury, or health condition of the employee or his or her family member; (2) Medical diagnosis, care, or treatment of the employee or employee’s family member; (3) Preventative care of the employee or his or her family member; (4) Closure of the employee’s primary workplace by order of a public official due to a public health emergency; (5) The care of his or her child whose school or place of care has been closed by order of a public official due to a public health emergency; (6) The employee’s or his or her family member’s exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider; (7) Meetings at a child’s school or place of care related to the child’s health or disability.

**Q. Are all my employees eligible to accrue and use paid sick leave?**

**A.** The Act broadly defines “employee” as “an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.” This means all employees – full-time, part-time and seasonal – are entitled to accrue and use 72 hours of paid leave per calendar year. (See next question about requirements for small businesses.)

- Exempt employees. Those expressly exempt include (1) those working accordance with a policy that allows the individual to scheduled 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; (2) unpaid trainees or unpaid interns; and (3) individuals employed in accordance with the Youth Employment Standards Act, MCL 409.101-.124.
- Independent contractors. LEO’s FAQ says: “An eligible employee is an individual engaged in service to an employer in the business of the employer. Michigan case law uses the economic reality test to determine whether an individual is an employee.”
- Public officials. The LEO FAQ also says this: Generally, publicly elected officials, members of publicly appointed boards and commissions, and similar public office holders are not considered employees for purposes of ESTA, even if paid or receiving some form of compensation, unless the governing entity treats these individuals as employees.

**Q. Is there a small business exemption?**

**A.** No, although employees working for businesses with 10 or less employees “shall accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit.” The employer may also choose to frontload all 40 hours at the start of a year.

A “small business” is defined as “an employer for which 10 or fewer individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis must be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained more than 10 employees on its payroll during any 20 or more calendar workweeks in either the current or immediately preceding calendar year.”

- Small businesses have until 10/1/25 to comply with ESTA requirements.

- Example used in LEO FAQ: Marie is a local restaurant owner. She employs 8 individuals from January 2025 through March 2025, then employs 12 individuals for any 20 weeks from April 2025 through Sept. 2025. Due to staff leaving for school, her staff size is reduced to 8 employees again starting in Oct. 2025 and continuing indefinitely. Marie’s restaurant was a small business from January 2025 until it reached the 20-workweek threshold. Once they reached the 20 or more workweeks with 10 or more employees’ threshold, the restaurant will not be a small business for the remainder of 2025 and all of 2026. Starting in January 2027, Marie’s Restaurant can again be considered a small business.

**Q. How must time be accrued?**

**A.** Employees “must accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 72 hours of paid earned sick time in a year, unless the employer selects a higher limit.” (40 hours for small businesses – see previous question.)

- **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 at the beginning of a year for immediate use.” If frontloading, employers only need to track how many hours of earned sick employees have used annually; no carryover is required.
- **Part-time employees.** These employees may also be frontloaded time (employer choice) in accordance with the following requirements: (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; (3) the employer must provide additional time if the employee works more hours than expected.

NOTE: *Unlike the Paid Medical Leave Act, which the Supreme Court invalidated, ESTA does NOT specify that an employer may cap accrual to one hour of leave in a calendar week. Under ESTA, if the employee works a 40-hour workweek, the employee will accrue one hour for the first 30 hours worked and the additional five hours worked would be counted towards the next increment earned.*

**Q. When is earned sick time available for use by an eligible employee?**

**A.** Except for small businesses, employees employed on February 21, 2025, begin accrual and may use accrued hours immediately. An employer may require a new employee, hired on or after February 21, 2025, to wait until the 120th calendar day after commencing employment before using accrued earned sick time. Employees reemployed within the 2-month period are considered to have continued employment for purposes of ESTA and the 120-calendar day waiting period (unless paid out). An employee may use earned sick time as it is accrued regardless of the pay period. Once 30 hours have been worked, an employee is entitled to use one hour of earned sick time for use under ESTA. Employees may use ESTA for paid work hours.

**Q. Must time be carried over?**

- A.** Employers may cap the carryover of time at 40/72 hours. They can also pay out annually to avoid carryover requirements. For employers choosing to frontload time, it can be use-it-or-lose-it.
- The LEO FAQ says this: “May an employer pay out unused sick leave annually in lieu of carrying over unused hours to the next year, or at termination without providing the hours at reemployment? Yes, if the employer uses the accrual method for calculation of earned sick time, the employer can choose to create a policy that allows employees to be paid out or carry over up to 40 hours, for small business, and 72 hours for other employers. The employer may pay out at termination or separation.”

**Q. How is a “year” defined for purposes of accrual of time?**

**A.** Employers have the flexibility to determine the definition of a year, as the law says a “year” means a “regular and consecutive 12-month period, as determined by an employer.” This allows employers to

determine whether an employee can accrue/use paid sick leave based on an anniversary date, a fiscal year, a calendar year or any other system the employer chooses.

**Q. How are individuals exempt from federal overtime laws treated?**

**A.** An employee who is exempt from overtime under the FLSA is “assumed to work 40 hours in each workweek, unless the employee’s normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.”

**Q. How does the ESTA apply to work performed outside the state of Michigan, or to employers located outside the state of Michigan?**

**A.** The LEO FAQ says: “ESTA applies to work performed by employees who are physically located in Michigan, regardless of the employer location. Kyle works remotely for an employer based in Chicago, he lives in Michigan and works out of his home office. Kyle would be entitled to the accrual and use of ESTA. Kyle works in Michigan, the employer sends Kyle to Ohio. Kyle does not accrue hours while working in Ohio and the employer is not required to allow Kyle to use accrued ESTA while working in Ohio. However, this is not a break in employment.”

**Q. Does time accrue when an employee is on vacation or on holiday?**

**A.** For ease of compliance, you may choose to allow time to accrue when an employee is on vacation/other leave, but the ESTA does not seem to require it. The Act says an eligible employee must accrue paid medical leave at a rate of at least one hour of leave for every 30 hours worked, not including hours used as paid time off. In other words, if they are not working because of vacation or a holiday, they don’t need to accrue the time.

**Q. Do I have to offer more than 72 hours of leave per year? Does time carry over year-to-year?**

**A.** An employer is not allowed to cap accrual at 72 hours but may cap usage at 72 hours in a given year. The employer may also choose to offer a more generous benefit (whether it be more sick time, vacation time or a mix).

**Q. When does an employee’s time start to accrue?**

**A.** On the effective date of the Act or upon commencement of the employee’s employment, whichever is later. ESTA does allow employers to require new employees to wait until the 120<sup>th</sup> calendar date after commencing employment to begin *using* their time (must begin accruing upon hire). This waiting period should prove helpful to certain seasonal employers.

**Q. Most of our employees have already accrued 40 hours in this calendar/benefit year. Are we in compliance for year one?**

**A.** We currently do not have a conclusive answer to this question and are seeking guidance from LEO.

**Q. Can I give an employee his or her time at the beginning of the calendar or benefit year?**

**A.** Yes, see the question above related to accrual.

**Q. Is it true the Act allows time to be used in less than full/half-day increments?**

**A.** Employees must be able to use time 1 hour increment or the smallest increment the employer uses to account for “absences of use of other time.”

**Q. Can I offer one bank of paid time off (PTO) or do I have to split out sick time from vacation time and other PTO banks?**

**A.** ESTA 2.0 greatly improves the ability of employers to provide a single PTO bank, saying it's allowable if employer's policy meets either of the following conditions: (1) provides the employer's 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.

- The LEO FAQ says this:
  - "An employer's paid time policy may be used so long as it provides at least the same benefits as provided in the ESTA, and may be used for the same purposes, under the same conditions, and accrued at a rate equal to or greater than the rate described in the ESTA."
  - "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."

**Q. May an employer ask questions regarding the need for using earned sick leave? Can the employer make an employee use their sick leave before using other types of leave?**

**A.** The LEO FAQ says: "When using leave under ESTA, employees should provide sufficient information for the employer to determine whether the leave meets the eligible uses under the ESTA. If an employer is unsure, they may ask additional questions about the nature of the leave to determine if the leave meets the eligible uses." On question two, the FAQ says: "No, an employee must request the use of Earned Sick Time."

**Q. Who is considered a "family member" under the ESTA?**

**A.** "Family member," as defined under the Act, includes "a biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis"; a biological parent, foster parent, stepparent, adoptive parent, or legal guardian of an employee; a spouse; or a person who stood in loco parentis when the employee was a minor child. Family members also include grandparents, grandchildren, biological, foster, and adopted siblings, any person to whom the employee is legally married under the laws of any state, and "an individual whose close association with the employee is the equivalent of a family relationship."

**Q. How is the pay rate calculated?**

**A.** Clarifies that an employee's normal hourly rate (i.e., the rate used to calculate ESTA pay) does not include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities. Simply says: "An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage or base wage for that employee or the minimum wage established under [Michigan law]..."

**Q. Can I require an employee to provide advance notice for absences?**

**A.** It's kind of complicated:

- Foreseeable events: Can require up to 7 days advanced notice.
- Unforeseeable: May require the employee to give notice in either of the following manners: (1) as soon as practicable or (2) 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, 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.”
- The LEO FAQ says this about the ability to be three days no-call, no-show: “Generally, no [not allowed]. Under an extreme circumstance, 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.”
- LEO also says this about recourse for employers who have employees failing to follow established notice and documentation policies: “Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements. An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under ESTA. An employer’s absence control policy must not treat earned sick time taken under ESTA as an absence that may lead to or result in retaliatory personnel action, unless the employee does not follow the employer’s written policy for notice as described above. 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 or violates the notice requirements under this act. The protections of ESTA apply to any person that mistakenly but in good faith alleges a violation of this section.”

**Q. Can I require a doctor’s note for absences?**

**A.** Yes, although employers are limited in terms of what they can require and when. The ESTA says: “For earned sick time of more than 3 consecutive days.” The employee must provide the documentation within 15 days after the employer requests it. However, the Act specifies: “The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation for purposes of this subsection.”

**Q. Is it true that employers are responsible for paying the costs of receiving documentation from a doctor?**

**A.** If an employer chooses to require documentation, “the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.” The term of “all out-of-pocket expenses” is undefined and will be subject to interpretation by LEO.

**Q. Do I have record keeping requirements?**

**A.** Yes. Under the 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.”

**Q. How does ESTA interact with FMLA?**

**A.** The LEO FAQ says: “Like other leave benefits, the ESTA may run concurrently with FMLA approved leave provided that the leave meets the requirements of FMLA. However, if ESTA leave is being used, requirements on advance notice, unforeseeable leave, documentation requirements, will be applied under the ESTA provisions. Once ESTA leave is exhausted or not being used for a FMLA or other covered leave, the FMLA or other leave provisions apply.”

**Q. Does the law create new rights for employees? What are the penalties for noncompliance?**

**A.** No, the right to go straight to court with a complaint was stripped from the statute. The legislation also stripped the “rebuttable presumption” – which would have specified that it’s presumed that an employer has

taken an “adverse personnel decision” if it takes an adverse action against an employee who has filed a complaint, opposed an employer’s policy or practice, or informed another person of his/her rights.

- 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 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.

**Q. Do I need new labor law posters?**

**A.** Yes, like the minimum wage law, employers must display conspicuously at their places of business a poster that contains compliance information. Some employers may need to post in Spanish, in addition to English. Order new posters today: [www.michamber.com/posters](http://www.michamber.com/posters).

**Q. What information do I need to communicate with employees?**

**A.** You must provide written notice to each employee at the time of hiring or **by March 22** stating: (1) the amount of earned sick time required to be provided under the act; (2) the employer’s choice on how to calculate a “year”; (3) the terms under which earned sick time may be used; (4) that retaliatory personnel action by the employer against an employee for requesting or using earned sick time is prohibited; and (5) the right of employees to file a complaint with the State for any violation of the act.

**Q. What if an employee is rehired or is transferred; must his/her time accrued be reinstated?**

**A.** Yes, if an employee separates from employment and is rehired by the same employer within 2 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement – so long as it wasn’t paid out. Accrued time transfers when an employee transfers to a separate division, entity or location by the same employer. In the case of a successorship, time must also transfer unless it is paid out.

- LEO’s FAQ says this: “Employees separated from employment for 2 months or less maintain all accrued earned sick time prior to the separation, begin accruing additional hours upon reemployment, and may use any accrued hours. Employees transferred to another classification or location with the same employer maintain all accrued hours and continue accruing hours. [This does] not apply if an employer pays an employee the value of the employee's unused accrued earned sick time at the time of a transfer or separation. Employees separated from employment with the same employer for more than 2 months lose all accrued, unused earned sick time, unless the employer’s policy allows these hours to be maintained.”
- LEO reminds employers: Public Act 390 of 1978, the Payment of Wages and Fringe Benefit Act, may require payment upon termination pursuant to the employer's written policy or contract.

**Q. What about collective bargaining agreements? Do we have to renegotiate them?**

**A.** The ESTA says: “If an employer’s employees are covered by a collective bargaining agreement in effect on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.”

- LEO’s FAQ says this: “If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the stated expiration date in the collective bargaining agreement. The collective bargaining agreement includes terms regarding sick time or sick leave benefits: Provided that the collective bargaining agreement includes terms related to sick leave, sick time, PTO with uses for sick time, or a similar benefit, the collective bargaining agreement terms apply, even if the benefit is less than what is

required by the ESTA, until the agreement expires or is renewed, extended, or otherwise renegotiated. The agreement also applies in situations where the agreement expressly excludes sick leave benefits. The collective bargaining agreement is silent as it relates to sick time or sick leave benefits: Employees covered by a collective bargaining agreement that is completely silent on sick leave, either for the entire unit or for specific classifications covered by the agreement, are covered by the ESTA and begin accruing benefits on February 21, 2025, unless they are a small employer as outlined above.”