



## Michigan's Paid Medical Leave Act

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Beginning on March 29, 2019, some Michigan employers will be required to provide eligible employees paid medical leave under the recently enacted Paid Medical Leave Act. This article will answer some basic questions that you may have about the Act. If you still have questions about how the Act may apply to you or your organization, or you would like assistance writing a paid medical leave policy, please feel free to contact us.

### **Which Employers Are Covered by the Act?**

Do you employ 50 or more individuals? If you answer "yes," then you are an employer that must comply with the Act. If you answer "no," then you do not have to comply with the Act.

Unfortunately, the Act does not define exactly how to determine if you "employ" an individual. Our advice is that you interpret the term "employ" broadly, not narrowly. For example, count individuals you employ on a part-time basis. But, do not count individuals who are properly classified as independent contractors. If you frequently bounce back and forth between employing 50 or more individuals, then as a practical matter you will likely want to proceed as if you are a covered employer under the Act. We can help you if you have questions about how to count employees.

### **If You Are An Employer Covered by the Act, Then You Must Fulfill Several Legal Obligations.**

If you are an employer covered by the Act, then you must do a number of things.

First, and most importantly, you must provide "eligible employees" paid medical leave under the terms of the Act. We will get into to what that means a little bit later.

Second, you must display a poster containing specific information about the Act in a conspicuous place accessible to eligible employees.

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The Michigan Department of Licensing and Regulatory Affairs has made a free poster available to meet this requirement at [https://www.michigan.gov/documents/lara/Paid\\_Medical\\_Leave\\_Act\\_Poster\\_644565\\_7.pdf](https://www.michigan.gov/documents/lara/Paid_Medical_Leave_Act_Poster_644565_7.pdf).

Third, you must retain records for at least one year documenting the hours worked and paid medical leave taken by eligible employees, and make those records available to the Michigan Department of Licensing and Regulatory Affairs upon its request.

Although the Act does not require covered employers to have a written policy, we advise our clients to have a written paid medical leave policy as part of an up-to-date employee handbook. If you have not reviewed your employee handbook for a few years, this might be a good time to have us review it.

Even if you are a covered employer, you only have to provide paid medical leave to an “eligible” employee.

### **Which Employees Are Eligible for Paid Medical Leave Under the Act?**

If you are a covered employer, you should assume that a particular employee is eligible for paid medical leave under the Act. If you answer “yes” to any of these questions, then you are **NOT** required to let that particular individual use paid medical leave under the Act.

- Did the employee work on average fewer than 25 hours per week during the immediately preceding calendar year?
- Is the employee a seasonal, temporary or variable hour worker? We can provide you specific definitions to determine if one of your employees may fit within these categories.
- Is the employee exempt from the federal overtime requirements as a bona fide executive, administrator, professional or outside salesman under the federal Fair Labor Standards Act?
- Does the employee primarily work at a location other than Michigan?
- Is the employee both employed by a non-public agency and covered by a collective bargaining agreement?
- Is the employee less than 20 years old and being paid a youth training wage (which is less than the regular state minimum wage rate) as permitted by state minimum wage laws?
- Is the employee otherwise ineligible under the Act? The Act has several more ways in which an employee may become ineligible, but these are unusual situations which will not apply to most of our clients. We can help you determine if one of these exceptions applies on a case-by-case basis. In brief, these more rare exceptions include individuals covered by specific federal railway laws, federal employees, and employees of another state or a subdivision of another state.

### **What Must a Covered Employer Provide to an Eligible Employee Under the Act?**

If you are a covered employer and have an employee that is eligible for paid leave under the Act, you must do the following:

- For eligible employees who commenced work before March 29, begin calculating the number of paid medical leave hours “accrued” by the employee on March 29. For eligible employees commencing employment after March 29, begin calculating the number of paid medical leave hours accrued by the employee when the employee begins work.
- Calculate paid medical leave for eligible employees using either the “accrual” method or the “front load” method.

**Accrual Method.** Beginning on March 29, for every 35 hours worked by the eligible employee, credit the employee with at least one hour of paid medical leave and keep track of this bank of hours for potential use later. The employee accrues the paid medical leave as she works the hours. You do not have to include paid vacation days, paid personal days, paid sick days as “hours worked.” An employer may limit the accrual of paid medical leave to one hour per calendar week (regardless of the number of hours worked). The employer may also limit the total number of medical leave hours accrued to 40 hours per benefit year. The employer may select any consecutive 12-month period as a benefit year. Under the accrual method, an employer may limit an eligible employee from carrying over more than 40 hours of accrued but unused paid medical leave to the next benefit year. Importantly, regardless of how many hours the employee has accrued, an employer may limit the use of accrued medical paid leave by an eligible employee to 40 hours per benefit year.

**Front Load Method.** As an alternative to the accrual method described above, an employer may “front load” at least 40 hours of paid leave – which includes vacation, personal days and traditional paid time off – for the eligible employee at the beginning of each benefit year. The employer may select any consecutive 12-month period as a benefit year and prorate leave for eligible employees who work for a partial benefit year. Under the front load method, an employer does not have to let an employee carry over any unused paid leave to the next benefit year. Employers who provide eligible employees with at least 40 hours of paid leave each benefit year will be presumed to be in compliance with the Act.

- Permit the employee to use his paid medical leave for permitted uses as the leave hours become available. Permit the employee to use the leave in one hour increments, unless the employer has a different increment policy in writing.
- When an employee uses an hour of paid medical leave, pay the employee at his normal hourly rate of pay or base wage. An employer does not have to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities when calculating the normal hourly wage or base wage. So, if an employer uses a straight time hourly rate, the employer can use that rate for paid medical leave.

### **What Are Permitted Uses of Paid Medical Leave Under the Act?**

Employers must permit eligible employees to use accrued medical leave due to any of the following reasons:

- The eligible employee’s own mental or physical illness, injury, or health condition, including the medical diagnosis, care, preventative care or treatment of same;
- The eligible employee’s family member’s mental or physical illness, injury, or health condition, including the medical diagnosis, care, preventative care or treatment of same;

- If an eligible employee, or the eligible employee's family member, is a victim of domestic violence or sexual assault, to:
  - Obtain medical care, psychological or other counseling for physical or psychological injury or disability;
  - Relocate due to domestic violence or domestic assault;
  - Obtain legal services or participate in any civil or criminal proceeding related to or resulting from the domestic violence or sexual assault.
- Under specific circumstances, a public official's closure of certain workplaces, schools, or places of child care due to health emergencies, as well as the exposure of the eligible employee or his family member to a communicable disease.

Employers may permit eligible employees to donate accrued, but unused, paid medical leave to other eligible employees.

### **What Kinds of Limitations Can Employers Put on the Use of Paid Medical Leave?**

Below are the most significant limitations a covered employer may put on the use of paid medical leave by an eligible employee:

- An employer does not have to let an employee "cash out" accrued but unused paid medical leave.
- An employer may require that an employee wait 90 days after commencement of employment before using any paid medical leave.
- An employer may require that an employee provide the employer with the same "usual and customary" advanced notice for the use of paid medical leave as the employer requires for other types of leave.
- An employer may require that the employee provide documentation in support of a requested medical leave, but the employer must give the employee at least three days to do so. **Please note, there are unique rules regarding documentation in the case of medical leave related to domestic violence or sexual assault. We can provide you with that information upon request.**
- Employers may still discipline or discharge employees for failing to comply with the employer's "usual and customary" notice, procedural and documentation requirements for requesting leave.

### **So What is Next?**

Now that you are generally familiar with the basic requirements of the Act, take these next steps to get ready for March 29.

**Step One:** Determine if you are a covered employer.

**Step Two:** If you are a covered employer, review your current leave policy to determine if you already provide at least 40 hours of paid leave – of any kind – to "eligible" employees each benefit year. If you do, then you will be presumed to comply with the Act. Review your policies and practices to make sure you otherwise comply with the Act.



**Step Three:** If you do not already have a policy which complies with the Act, decide whether you would like an “accrual” type policy or a “front load” type policy. Once you decide what kind of policy to adopt, we advise that you put the policy in writing to help you consistently apply that policy.

**Step Four:** If you are covered by the Act, permit eligible employees to use their accrued sick leave under the written policy. **Don’t forget to display the required poster and keep the required records if you are covered by the Act.**

**This article is meant for general information purposes. If you seek legal counsel or have questions about how the Act applies to a specific situation, contact a Foster Swift employment law attorney with any questions about the Paid Medical Leave Act, or any other employment or labor law issue before taking any action:**

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