



What Employers Need to Know About Michigan's Amended Earned Sick Time Act

Employment Law Practice Team

Foster Swift Labor & Employment Law E-blast

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In a race against the clock, Senate Democrats and House Republicans managed to reach a compromise regarding the Earned Sick Time Act ("Act") which will apply to all Michigan employers. On February 20, 2025, the Michigan House and Senate passed HB 4002 and the Governor signed on February 21, 2025. It is important to note the Act is effective today, February 21, 2025.

The highlights of HB 4002 are as follows:

- **Effective Date:** February 21, 2025 at 12:02 a.m.
- **Posters/Notice:** Employers have 30 days from February 21, 2025 to post new posters created by the Michigan Department of Labor and Economic Opportunity's civil rights division ("Department") and provide employees with written notice of the Act.
- **Employers with more than 10 employees – New Frontloading Benefits:**
 - Employees of employers that are not small businesses (greater than 10 employees) shall accrue paid earned sick time at a rate of 1 hour for every 30 hours worked but may not use more than 72 hours of paid earned sick time in a year, unless the employer selects a higher limit.
 - As an alternative to the accrual of paid earned sick time, an employer may frontload not less than 72 hours of paid earned sick time at the beginning of the year for immediate use.
- **New Carryover Cap:**
 - Carryover is capped at 40 hours for small businesses and 72 hours for all other employers, unless the employer selects a higher limit.
- **New Frontloading Benefits:**
 - If an employer frontloads sick time, the employer does not have to:

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- Carry over any unused earned sick time,
 - Calculate and track an employee's accrual of sick time, or
 - Pay the value of the employee's unused sick time at the end of the year.
 - **New Probationary Period:**
 - Accrual of time begins on February 21, 2025 but the employer may require an employee hired after February 21, 2025 to wait until 120 days after commencing employment before using sick time.
 - **New Wage Rate Clarification:**
 - The Act clarifies that an employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, or tips in its calculation of normal hourly wages.
 - **New Notice Requirements:**
 - New language in the Act that states if an employee's need for sick time is not foreseeable, an employer may require the employee give notice of their intention to use earned sick time in either of the following manners:
 - As soon as practicable, or in accordance with the employer's policy related to requesting or using sick time or leave if both of the following are met:
 - On the date of the employee's hire; on February 21, 2025; or on the date the employer's policy takes effect, whichever is latest, the employer provides the employee with a written copy of the policy that includes the procedures for how the employee must provide notice; or
 - The employer's notice requirement allows the employee to provide notice after the employee is aware of the need for the earned sick time.
 - **New Reasonable Documentation Requirements:**
 - Employer may not ask for documentation regarding the employee's use of sick leave until the employee uses 3 consecutive days and employers still must pay out of pocket expenses.
 - New requirement that if an employer requests that an employee provide documentation related to whether earned sick time has been used for a proper purpose, the employee must provide such documentation within 15 days of the request.
 - **Retention of Accrued Time After Separation:**
 - An employee may now retain accrued earned sick time if they separate from employment and are rehired within 2 months after separation.
 - **Adverse Action Permitted for Employee Abuse:**
 - An employer is now permitted to take adverse personnel action against an employee if the employee uses earned sick time for a purpose other than prescribed under the Act or violates the notice requirements.
 - **New Employee Exclusions:**
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- New exclusion for an individual who works in accordance with a policy of an employer if both of the following conditions are met: (A) The policy allows the individual to schedule the individual's own working hours; (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.
- **Small Businesses – New Usage Cap and Frontloading Benefits:**
 - An employee of a small businesses (10 or fewer employees) accrues sick leave at a rate of 1 hour for every 30 hours worked but may not use more than 40 hours of paid earned sick time in a year, unless the employer selects a higher limit.
 - As an alternative to the accrual of paid earned sick time, a small business may frontload not less than 40 hours of paid sick time at the beginning of the year for immediate use.
 - Small businesses are not required to do any of the following until October 1, 2025:
 - Allow an employee to accrue paid earned sick time
 - Frontload paid earned sick time as an alternative to accrual
 - Calculate and track an employee's accrual of paid earned sick time
- **No Private Right of Action:**
 - Employees can no longer file a civil lawsuit for the employer's violation of this Act.

ESTA Webinar:

Foster Swift hosted a webinar, **see the full recording here**. The webinar discussed the new requirements of ESTA including:

- New Frontloading Benefits
- New Notice Posting Requirements
- Accrual and Usage Cap (More than 10 employees vs. less than 10 employees)
- Exemptions and noncompliance penalties

We will continue to send updates as we receive them. If you have any questions or concerns in the meantime, contact a member of Foster Swift's Employer Services Practice Group.