MILLER CANFIELD

Key Changes in the Revised Earned Sick Time Act for Michigan Employers

February 25, 2025

Just as the Michigan Earned Sick Time Act was set to go into effect on February 21, 2025, the Michigan Legislature came to an agreement to revise the Act. The Bill (HB 4002) was promptly signed by Governor Whitmer and became effective February 21. The Act still provides guarantees to Michigan workers for paid sick time while also providing employers with improved flexibility in implementing their paid sick time policies. There are, however, several changes in the revised Act compared to its prior iteration of which employers should be aware.

One notable change is to the definition of covered "employee," which now includes several exclusions. Specifically, the following individuals are now expressly excluded from the Act's coverage:

- an individual employed by the federal government;
- an individual who works under a policy where both of the following conditions are met: (a) the policy allows the individual to schedule the individual's own working hours; and (B) the policy prohibits the employer from taking an adverse employment action if the individual does not schedule a minimum number of hours;
- an unpaid trainee or intern; and
- an individual employed under the youth employment standards act.

The definition of covered "employer" was also revised and no longer includes in its definition the term "nonprofit agency." However, nonprofit agencies are not expressly excluded from the definition, creating an ambiguity as to whether they are subject to the Act.

Small businesses, which continue to be defined as an employer with less than 10 individuals working for compensation in a given week, have until October 1, 2025, to comply with the Act's requirements. Additionally, newer small businesses which did not employ any employees prior to February 21, 2022, are not required to comply with the Act until 3 years after the first employee is hired.

The revised Act presumes that employers who provide employees with 72 hours of paid earned sick time at the beginning of the employer's chosen benefit year to be compliant with the minimum sick time accrual requirements. Otherwise, covered employees are entitled to accrue paid earned sick time at the rate of one hour for every 30 hours worked. The revised Act does not require an employer that frontloads sick leave at the beginning of the year to: (1) allow an employee to carry over any used paid sick time from one year to the next; (2) calculate and track accrual of paid sick time; or (3) pay the employee the value of unused accrued paid sick time at the end of the year. For employers that choose to use the calendar year as their 12-month period, the Act does not expressly state whether the frontloaded amount can be prorated for 2025 (starting February 21) or whether employers who choose to frontload are required to provide the full 72 hours for 2025.

When the new changes are effective, small businesses are permitted to frontload a minimum of 40 hours of paid earned sick time at the beginning of the year without having to track the employee's accrual of earned sick time. The revised Act removes the requirement for small businesses to allow employees to use up to an additional 32 hours of unpaid leave that was afforded in the previous version of the Act.

Continued

Additionally, the revised Act allows employers who employ part-time employees to provide their yearly balance of paid earned sick time at the beginning of the employer's year so long as: (1) they also provide written notice of the employee's anticipated hours worked for the given year; (2) the amount of earned sick time to be provided for that year is proportionate to the amount of sick time that the employee would accrue if they worked all the anticipated hours; and (3) the employer provides additional paid earned sick time hours should the employee work more hours than anticipated.

The medical documentation requirements had only minor changes, while there are additional provisions to the notice requirements. Specifically, employers may request reasonable documentation within 15 days but can only require it when an employee takes more than three (3) consecutive days of sick leave. The documentation should only require a signature by a health care professional confirming the use of sick time was for a purpose listed under the Act. If an employer requires documentation, the employer must pay "all out-of-pocket expenses the employee incurs in obtaining the documentation." The employer is also responsible for paying "any costs charged to the employee by the health care provider for providing the specific documentation required." The revised Act, however, does not explain what is included in either "out-of-pocket expenses" or "costs."

For notice purposes, when the use of sick leave is not foreseeable, an employee only needs to give notice as soon as practicable or in accordance with the employer's written policy related the request to use sick time. When the use of sick is foreseeable, an employer can require notice of the use of sick leave up to seven (7) days before the employee intends on initiating sick leave.

The Act prohibits an employer from treating an employee's use of earned sick time as an absence that may lead to adverse employment actions. Thus, employers should be careful when enforcing their time and attendance policies to avoid any potential conflicts with the Earned Sick Time Act.

Employees who believe their employer violated the Act may file a claim with the Department of Labor and Economic Opportunity within three years. The revised Act, however, no longer permits an employee to directly file a lawsuit.

Miller Canfield will continue to monitor developments. If you have questions about how the Act may impact your organization, please reach out to your Miller Canfield attorney or one of the authors of this alert.