

Employer Implications of the Earned Sick Time Act

November 2, 2018

In early September 2018, Michigan's Legislature adopted the Earned Sick Time Act ("the Act"). This title is somewhat a misnomer, as the Act is much broader than just "sick time." The Act takes effect April 1, 2019, and, though complex, it essentially:

- Requires employers to provide every employee one hour of paid sick time for every 30 hours worked (unlimited accrual). Depending on the employer's size, the employee can then use up to a certain amount of paid sick time in a year for a number of specified purposes, such as illness, medical treatment, absences caused by domestic violence or sexual assault, or meetings related to a child's school or care. For a business that has 10 or more employees on its payroll during any 20 or more calendar workweeks, the employee may use up to 72 hours of paid sick time per year. For a "small business" (less than 10 employees), the employee may use up to 40 hours of paid sick time per year, after which the employee may use an additional 32 hours of unpaid sick time;
- Allows employees to take leave with little advance notice;
- Permits employers to request documentation only if the absence is longer than three days, and then requires that the employer cover the employee's out-of-pocket costs incurred in providing such documentation;
- Requires employers to provide written notice to employees of their rights under the Act, including protections against employer retaliation; and
- Permits aggrieved employees to file claims with the Department of Licensing and Regulatory Affairs or take legal action.

As written, the Act could prove challenging for many employers to implement, especially those who have established time-off policies.

The Act was originally advanced as a citizen initiated/petitioned ballot measure to be placed before the voting public. Recognizing the law could prove problematic for employers as written, the legislature opted to avoid the ballot initiative by adopting the law as written. Consequently, many reports suggest the Michigan legislature's plan is to revisit and revise the Act during the "lame duck" session after the November elections. This might result in revisions to the Act. Not surprisingly, proponents of the Act have threatened litigation if the legislature revises the Act.

What does this mean for employers? It is unclear what the Act will look like come April 1, 2019. Miller Canfield will continue to monitor and report on further developments regarding the Act prior to then. In the meantime, employers should take stock of existing time-off policies, especially if they have separate sick time, vacation time, and personal time policies. As always, feel free to contact your Miller Canfield attorney if you have questions.