

Employer Impact of Revisions to Paid Medical Leave Act

December 17, 2018

As anticipated, the Michigan Legislature has revised and Governor Snyder has signed the "Earned Sick Time Act" and retitled it the "Paid Medical Leave Act" ("the Act"). Below are some of the key provisions of the Act.

Scope

The Act only applies to private or public sector employers who employ 50 or more individuals. In addition, only "eligible employees" are entitled to benefits under the Act. Specifically excluded from the definition of "eligible employees" are those who are FLSA "exempt"; private sector employees covered by a collective bargaining agreement; employees employed by the U.S. government, another state, a political subdivision of another state; an employee whose primary work location is in another state; temporary employees who work less than 25 weeks in a calendar year; and employees who work less than 25 hours per week on average.

Employers' Obligations to Provide Paid Medical Leave Under the Act

Covered employers have two options for providing paid medical leave:

- **Option 1:** Eligible employees must accrue 1 hour of paid medical leave for every 35 hours worked. Accrual can be capped at 1 hour per week and 40 hours per year. The employer is not required to allow the eligible employee to carry over more than 40 hours of unused accrued paid medical leave from one year to another, and can limit the amount of paid medical leave used per year to 40 hours.
- **Option 2:** The employer can provide at least 40 hours of paid medical leave to an eligible employee at the beginning of the benefit year (the employer can prorate for a partial benefit year). The employer is not required to allow the eligible employee to carry over any unused paid medical leave to another benefit year.

Under the Act, paid medical leave begins to accrue from the later of the effective date of the Act (expected to be April 1, 2019) or commencement of the eligible employee's employment. In other words, once the Act takes effect, there will be no waiting period before eligible employees can begin accruing leave. However, the employer can require that the employee wait 90 days after commencing employment before using any accrued paid medical leave.

An employer is not required to pay out any accrued and unused paid medical leave not used by the end of the benefit year, or unused as of a separation/termination date.

The Rebuttable Presumption of Compliance

The Act creates a rebuttable presumption that the employer is in compliance if the employer provides at least 40 hours of *paid leave* to an eligible employee each year. "Paid leave" includes, but is not limited to, paid vacation days, paid personal days, and paid time off.

The Allowed Purposes for which Paid Medical Leave Can Be Used

An "eligible employee" can only use accrued paid medical leave for specified purposes, including the employee's or a covered family members mental or physical illness/injury, medical treatment, preventative care, and for absences caused by domestic violence or sexual assault of the eligible employee and/or a covered family member.

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Compliance with Employer's Usual and Customary Practices to Take Paid Medical Leave

An "eligible employee" can be required to comply with the employer's usual and customary notice, procedural and documentation requirements when requesting paid medical leave. The employer must provide the employee at least three (3) days to provide requested documentation. The employer may discipline or discharge an employee who fails to comply with the employer's usual and customary notice, procedural and documentation requirements. The employer is not responsible for costs incurred by an employee in obtaining required documentation.

Employers' Requirements to Provide Notification to Employees of Their Rights Under the Act

The employer is required to display, in a conspicuous and accessible place, a poster that contains information about the amount of time that must be provided for eligible employees and the purposes for which it could be used. The Department of Licensing and Regulatory Affairs will supply these posters at no cost to employers.

Employer's Record Retention Requirement

The Act requires an employer to retain for at least one (1) year records documenting the hours worked and paid medical leave taken by eligible employees.

Remedies for Violations of the Act

An aggrieved employee will have six (6) months to file a complaint with the Department of Licensing and Regulatory Affairs. The Department will investigate and attempt to mediate a resolution. An employer who violates the Act may be required to pay all paid medical leave improperly withheld. Additionally, an employer who fails to provide paid medical leave as required by the Act may face an administrative fine of not more than \$1,000. Finally, an employer who willfully violates the posting requirement may face an administrative fine of not more than \$100 for each separate violation.

What does this mean for employers? The above e-alert provides a summary of some of the more critical parts of the "Paid Medical Leave Act," but does not detail the Act in its entirety. Accordingly, covered employers should begin the process of reviewing their current policies and procedures and considering how they can best implement all required changes. Please contact your Miller Canfield employment and labor attorney if you require assistance.