



ESTA Compliance and Implementation

Chamber Town Hall 1/28/2025



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Information provided is current as of January 28, 2025

The Basics

- ALL Michigan employers with 1 or more employees (except Fed. Gov't).
- Covers employees working in MI
- All employees included; salary, hourly, part-time, temporary, interns, etc.
- Accrue 1 hour for every 30 hours worked.
- 72-hour max use per year, but no accrual limit.
- Carryover of unused, accrued leave required.
- Small business (fewer than 10 employees) may provide 40 hours paid then 32 hours unpaid.
- General PTO policy is permitted if amount and use of leave satisfies all the criteria set forth in the Act.
- When paying the leave, calculate rate equal to the average hourly compensation in the preceding pay period. Can include overtime, shift premium, etc.
- Increments of leave is in the smallest increment that payroll system uses to track and account for absences.
- Can't require more than 7 days notice for foreseeable leave; unforeseeable as soon as practicable
- Can't require documentation until after 3 days of leave or more. Employer covers any costs.
- Must allow reasonable time to provide documentation and does not need to be detailed.
- At separation of employment there is no payout requirement. Reinstate accrued leave if rehired within 6 months .

Employer Obligation and Liability

- Record retention of 3 years tracking hours worked and leave taken.
- Required to post Poster – **WAIT** this may change. It currently is available in English and Spanish. Remote workers in MI too.
- Must provide employee notice in writing for:
 - Amount of leave required under the Act.
 - Terms of use and additional employer rules.
 - Establish a benefit year; calendar/anniversary/Feb 21, etc.
 - Retaliation is prohibited and the right to file a civil action and administrative complaint
- Best practice would be to have your policy refer to and/or attach the poster.
- 3-year statute of limitation.
- No Administrative Remedy Required.
- Private Right of Action means they may go straight to State or Federal Court. Possibly higher damages and more class action suits.
- Noncompliance claims could include administrative fines, back wages, liquidated damages, costs, attorney fees, and civil action by employee.
- Retaliation Protection for use of time and complaints about noncompliance.
- Special to ESTA is “Rebuttable Presumption of Retaliation” if you take adverse action within 90 days of an employee complaining of violations, informing others of their rights, and participating in Agency investigation.

What to be mindful of

- There are other time-off laws to navigate FMLA (50 ees), ADA (15), Pregnant Workers Fairness Act (15), MI Persons w/Disabilities (1), Company Short-Term Disability or salary continuance rules
 - For notice and documentation.
 - Paid and unpaid time, can't force to double dip.
- Under ESTA, for salaried exempt employees we can assume they work 40 hours. Be sure they are classified exempt correctly.
- Be sure independent contractors are classified correctly.
- ESTA is 1 hour for every 30 hours actually worked.

February 21 is coming fast what to do now

- Watch for Legislative changes; there is commonality in both Bills.
- Draft policy but don't publish yet! Implement and post most up-to-date poster by 2/21
- Two policy structure considerations
 1. Front-load (must meet up to 72 hours every year including year 1) versus Accrual
 2. 1 Bucket (PTO Bank) or 2 Bucket (Vacation/Sick & Personal)
- Clarify carryover and payout

Policy Guide

When writing a policy, it is best practice to have the following sections and refer and/or attach poster:

- Introduction
- Purpose
- Eligibility
- Accrual Start Time – Benefit Year
- Accrual Rates and Maximums
- Usage
- Notification and Documentation Requirements
- Carryover and Payout; must state no payout unless you want to provide payout
- Job Protection and Retaliation
- Organizations Contact

February 21 is coming fast what to do now, continued

- Clean up your attendance policy; call in procedure, number of points, documentation, RTW, etc.
- Review holiday pay policy to ensure it doesn't penalize ESTA alone, i.e., working day prior and after holiday.
- Review no-call/no-show policy and internal practices.
- If self-funded for Short-Term Disability or Salary Continuation, review for possible changes.
- Update contract language with independent contractors, temporary agencies, etc. for compliance responsibility and indemnification for noncompliance.
- Talk with payroll provider about implementation, coding/tracking, and reporting available time.
- Union contracts wait until the contract expires, unless current CBA is silent on sick time.
- Careful with terminations, calculate accrued time to ensure correct amount was given.
- True-up possibly quarterly, semi-annually, or annually. Act requires annually.
- Talk with salaried exempt staff regarding usage and reporting ESTA.
- Talk with Supervisors about usage and tracking ESTA as well as retaliation.

ESTA Communication Best Practices

Explaining ESTA Policy changes

1. **Clear Communication:** Ensure that the communication about the changes is clear and transparent. Use simple language and avoid jargon. Explain the reasons behind the changes and how they comply with the new ESTA requirements.
2. **Comparison Charts:** Create comparison charts that show the old policy versus the new policy. This visual aid can help employees see that their benefits are not being reduced but restructured.
3. **Open Forums:** Hold open forums or Q&A sessions where employees can voice their concerns and get immediate answers. This can help clear up any misunderstandings and provide a platform for open dialogue.
4. **Personalized Meetings:** For tenured employees who feel they are losing out, consider having one-on-one meetings to address their specific concerns and explain how the new policy benefits them in the long run.
5. **Acknowledge:** Start by acknowledging the concerns of your employees. Let them know you understand their feelings and that their feedback is valuable.

Explaining ESTA Requirements

1. **Simplify the Legalese:** Break down the ESTA requirements into simple, easy-to-understand terms. Use examples that are relevant to your employees' daily experiences.
2. **Highlight Benefits:** Emphasize the benefits of the new policy, such as the flexibility of using sick and vacation time interchangeably and the frontloading of sick time.
3. **Provide Resources:** Offer resources such as FAQs, detailed policy documents, and contact information for HR representatives who can provide further clarification.
4. **Training Sessions:** Conduct training sessions to educate employees about the new policy and how it aligns with ESTA requirements. This can help them understand the legal context and the necessity of the changes.



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Thank You

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Everything HR

The MI Supreme Court's Decision on Mandatory Paid Sick Leave

Top Things Lawmakers Need to Know About the Impact of the Supreme Court's Decision on Paid Leave

DISRUPTIVE AND BAD FOR EMPLOYEES

The Earned Sick Time Act will force employers of all sizes and types to rethink their existing paid leave policies. Because the Act micromanages things like notification and increments that time can be used and adds avenues for costly litigation against businesses for compliance mistakes, most employers will move to separate sick time from other paid time off (PTO) banks -- even though most employees prefer a combined bank.

- **Our Ask:** Exempt employers with paid leave policies that meet or exceed the number of hours required under the act, including all forms of paid leave.

NO EXEMPTIONS

Sick leave must be expanded to all employees (full-time, part-time, seasonal, temporary workers, independent contractors, subcontractors); all employers with one or more employees must comply. Very few states have laws as extensive as Michigan.

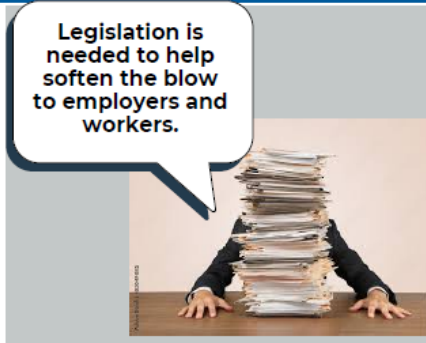
- **Our Ask:** Add a small employer exemption or expand the current small employer threshold. Apply Earned Sick Time Act to full- and part-time employees averaging 20 or more hours per week; exempt seasonal, temporary workers, independent contractors, and subcontractors. There's good precedent and logic to exempting employers with fewer than 50 employees (federal Family Medical Leave Act [FMLA]).

NO NOTIFICATION

The Act only requires employees to submit leave time notifications "as soon as practicable." In practice, this will provide employees 72 hours of no-notice, intermittent leave time each calendar year and could very well exacerbate staffing shortages. No other state has a similar no-notice, ghosting provision.

- **Our Ask:** Each business is different in terms of its needs. At the very least, time should be limited to use in four-hour/half-day increments; notification should be required prior to the start of a shift, unless the employee is incapacitated.

Legislation is needed to help soften the blow to employers and workers.



LITIGATION NIGHTMARE

The Act allows employees to sue businesses and automatically assumes the employee's side for unfavorable personnel actions (via a rebuttable presumption), putting employers in the position of having to defend their HR decisions in court. No other state has a rebuttable presumption, creating a disincentive to hiring and entrepreneurship in Michigan.

- **Our Ask:** Remove the language allowing for a private right of action and rebuttable presumption. Enforcement and penalties should be handled by the State.

NO FRONTLOADING

The Act doesn't allow employers to frontload employees' time off at the beginning of the year. It must accrue.

- **Our Ask:** Allow employers to frontload time off to avoid keeping complicated accruals and to allow the employee to have maximum flexibility.

ESTA – Five Key Changes

- **Exempt small business** and certain classifications of workers.
- Allow employers to **frontload time and avoid tracking** and carryover requirements.
- Give businesses **more flexibility to combine** earned sick time with other PTO.
- **Avoid a one-size-fits-all approach** to advanced notice and increments of time, recognizing that different businesses have different needs.
- **Strike private right of action** and rebuttable presumption, leaving enforcement with the state.

Coalition members



HB 4002

- Exempts small businesses (employers with less than 50 employees)
- Clarifies the definition of employees eligible for benefits
- Retains the accrual method of 1 hour for every 30 hours worked, with usage capped at 72 hours per year, and limiting carryover to 72 hours
- Recognizes that employers who frontload 72 hours per year are compliant and **do not** need to carryover time from one benefit year to the next
- Permits employers to provide a single PTO bank that can be used for all purposes including ESTA. Gets rid of “same terms and conditions”
- Advanced notice and notification must align with the employer’s customary notice
- Employers may limit use of leave to 1-hour increments
- Rebuttable presumption and private right of action eliminated
- Allows employers to require employees to take ESTA time concurrently with FMLA, or any other applicable law

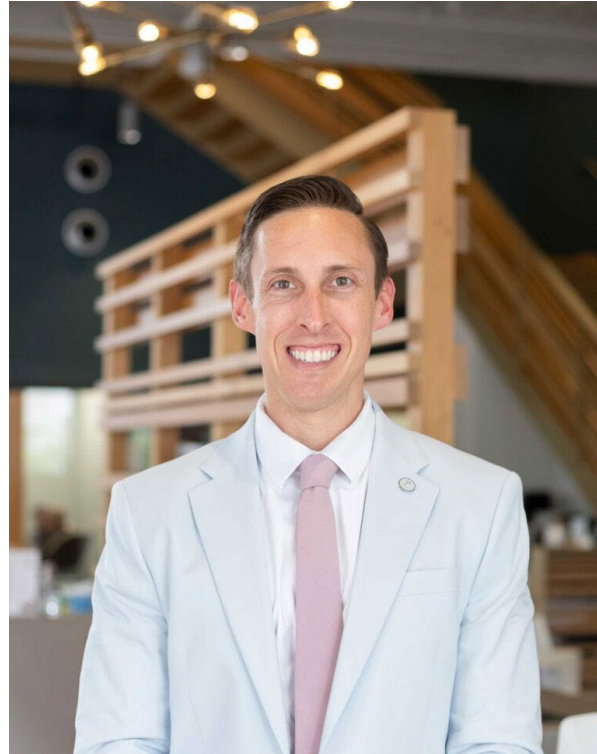
SB 15

- Defines small business as fewer than 25 employees. (Does not exempt. Would mean they could provide 40 hours paid/ 32 unpaid.)
- Allows small businesses to **frontload** 40 hours of paid and 32 hours of unpaid earned sick time at the beginning of the year.
- Retains the accrual method of 1 hour for every 30 hours worked but permits frontloading of 72 hours as an **alternative** to the accrual method, while **retaining the carryover** from year to year.
- Carryover from year to year may be limited to 144 hours if the employer pays the employee the value of the employee's unused sick time before the end of the year. If the employer does not pay out the value, carryover may be capped at 288 hours.
- Employers may limit increment of use to 1 hour.
- Rebuttable presumption and private right of action eliminated.

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