

## Paid Leave Changes

	<b>Previous Law (<a href="#">Public Act 369 of 2018</a>; Paid Medical Leave Act [PMLA])</b>	<b>What's Required Under <a href="#">MI Supreme Court Ruling</a></b>
<b>DEFINITION OF EMPLOYER</b>  <i>(Determines which businesses need to comply)</i>	<ul style="list-style-type: none"> <li>• The PMLA only applies to businesses who employ 50 or more individuals.</li> <li>• All employees must be counted when determining whether an employer meets the 50-employee threshold.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA applies to “any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs one or more individuals.”</li> </ul>
<b>ELIGIBLE EMPLOYEES</b>  <i>(Determines which employees need to be extended the benefit)</i>	<ul style="list-style-type: none"> <li>• The PMLA applies to “eligible employee” - defined as an individual who an employer is “required to withhold for federal income tax purposes.”</li> <li>• The law has 12 specific employee exemptions, including: employees exempt from FLSA overtime requirements, private sector employees covered by a collective bargaining agreement, temporary workers, employees who work in other states, independent contractors, certain seasonal and part-time employees, variable hour employees, flight deck, cabin crew and railroad workers.</li> <li>• The PMLA allows employers to “require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave.”</li> </ul>	<ul style="list-style-type: none"> <li>• Under the ESTA, <u>all employers</u> (one or more employees) will need to adjust their policies, as leave is available to any “individual engaged in service to an employer in the business of the employer.”</li> <li>• The law contains <u>no employee exemptions</u>; it applies to full-time, part-time and seasonal employees; FLSA exempt employees; and flight deck, cabin crew and railroad workers. NOTE: Questions remain regarding whether the language applies to independent contractors and temporary employees. This is because it's unclear whether the language is intended to extend only to individuals who the employer is required to withhold for federal income tax purposes.</li> <li>• The “act provides minimum requirements...and shall not be construed to preempt, limit, or otherwise affect the applicability of...a collective bargaining agreement, that provides for greater accrual or use of time off.”</li> <li>• No initial waiting period is allowed before ETSA hours can be used by an employee (i.e., it can be earned and used as accrued).</li> </ul>

<p><b>SINGLE BANK OF LEAVE TIME (VERSUS SEPARATE BANKS FOR SICK, VACATION/ PERSONAL)</b></p>	<ul style="list-style-type: none"> <li>• The PMLA contains a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year. “Paid leave” is defined as including, but not limited to, paid vacation days, personal days and paid time off.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA provides the employer is in compliance “if the employer provides any paid leave, that may be used for the same purposes <u>and under the same conditions</u> provided in this act and that is accrued in total at a rate equal to or greater than the rate described....”</li> <li>• NOTE: The “under the same conditions” language is likely to prove tricky. Employers are advised to carefully study what might need to change with their existing paid time off (PTO) policies if wishing to proceed with combining ETSA leave with PTO or other banks of leave time. It would seem the ESTA limits the types of restrictions employers can put on all leave time when choosing this option (e.g., would prohibit employers from requiring advance notice, mandating that vacation/personal time be used in half day/full day requirements, etc.).</li> </ul>
<p><b>ACCRUAL</b></p>	<ul style="list-style-type: none"> <li>• The PMLA specifies employees would accrue one hour of paid sick leave for every 35 hours <i>worked</i>, up to 40 hours per benefit year -- but an “employer is not required to allow an eligible employee to accrue more than one hour of paid medical leave in a calendar week.”</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA requires employees to accrue one hour of paid sick leave for every 30 hours worked under the Act. (NOTE: There is no language capping accrual at one hour per calendar week.)</li> <li>• Employees working for employers with fewer than 10 employees (very small businesses) would be entitled to use 40 hours of paid leave, 32 hours of unpaid leave.</li> <li>• <u>All</u> employees would be entitled to use 72 hours in a year. Employers can cap usage at 72 hours in a given year.</li> </ul>
<p><b>CAPS AND FRONT-LOADING TIME</b></p>	<ul style="list-style-type: none"> <li>• Under the PMLA, an employer is not required to allow an eligible employee to use more than 40 hours of paid sick leave in a single benefit year or to carry over more than 40 hours of time from one benefit year to another.</li> </ul>	<ul style="list-style-type: none"> <li>• Under the ETSA, although the employer could limit use to 72 hours per year, all time must be carried over from year to year. (NOTE: No cap on the number of hours that must be allowed to carry over year to year.)</li> </ul>

	<ul style="list-style-type: none"> <li>Employers may front-load all 40 hours at the start of a benefit year for ease of compliance. Under the PMLA, this allows employers to avoid the carry-over requirements.</li> </ul>	<ul style="list-style-type: none"> <li>The option to front-load all required hours at the start of a calendar or benefit year is not permitted under the ESTA.</li> </ul>
<b>USE OF TIME (INCREMENTS)</b>	<ul style="list-style-type: none"> <li>The PMLA specifies time “must be used in one-hour increments unless the employer has a different increment policy, and the policy is in writing in an employee handbook or other employee benefits document.”</li> </ul>	<ul style="list-style-type: none"> <li>Leave time can be used in the smallest increment that the employer’s payroll system uses to account for absences or use of other time.</li> <li>The Act specifies “[f]or any employee whose hourly wage varies depending on the work performed, the ‘normal hourly wage’ means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.”</li> </ul>
<b>PAYMENT OF TIME</b>	<ul style="list-style-type: none"> <li>The PMLA requires the employer to “pay each eligible employee...at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the minimum wage rate...An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay or gratuities in the calculation...”</li> </ul>	<ul style="list-style-type: none"> <li>The ESTA specifies an “employer shall pay each employee...at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage...but not less than the minimum wage rate...For any employee whose hourly wage varies depending on the work performed, the ‘normal hourly wage’ means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.”</li> </ul>
<b>NOTIFICATION AND DOCUMENTATION</b>	<ul style="list-style-type: none"> <li>The PMLA allows the employer to require the employee to comply with the employer’s usual and customary notification, procedural and documentation requirements.</li> </ul>	<ul style="list-style-type: none"> <li>The ESTA requires seven days’ notice for use or, if not possible, “as soon as practicable.”</li> <li>An employer can only require documentation after three consecutive leave days. However, the employers shall not delay the commencement of earned sick time based on lack of documentation.</li> <li>Documentation that sick time is necessary will be limited to a simple and generic statement by a “health care professional” (defined to include traditional medical professionals as well as</li> </ul>

		<p>acupuncturists, massage therapists, veterinarians and more).</p> <ul style="list-style-type: none"> <li>• Employers are responsible for any payment of the employee's out-of-pocket costs associated with providing documentation, including "any costs charged to the employee by the health care provider for the specific documentation required by the employer."</li> <li>• NOTE: In practice, the ESTA will provide employees with up to 72 hours of no-notice, intermittent leave time each calendar year. Employers' hands will be tied (i.e., no discipline allowed; see "rebuttable presumption") as it relates to situations where an employee is a "no call, no show" for up to three days. The ESTA language is ripe for abuse and will exacerbate existing staffing shortages and workforce issues.</li> </ul>
<b>RECORDKEEPING</b>	<ul style="list-style-type: none"> <li>• Requires employers to retain records for one year.</li> </ul>	<ul style="list-style-type: none"> <li>• Requires employers to retain record of hours worked and earned sick time taken for three years.</li> <li>• Creates a rebuttable presumption that specifies employers are in violation of the act if they do "not maintain or retain adequate records documenting the hours worked and earned since time taken by the employee."</li> </ul>
<b>REBUTTABLE PRESUMPTION</b>	<ul style="list-style-type: none"> <li>• The PMLA does not contain a rebuttable presumption.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA specifies "an employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action."</li> <li>• The ESTA also creates a "rebuttable presumption" – specifying that it's presumed that an employer has taken an "adverse personnel decision" if it takes an adverse action against an employee who has filed a</li> </ul>

		complaint, opposed an employer's policy or practice, or informed another person or his/her rights.
<b>PRIVATE RIGHT OF ACTION</b>	<ul style="list-style-type: none"> <li>• The PMLA creates an administrative process through the Department of Licensing and Regulatory Affairs (LARA) for employees wishing to lodge complaints.</li> <li>• LARA must issue a determination upon conclusion of an investigation and inform the employer of its appeals rights.</li> <li>• LARA may assess payment of medical leave and back-pay. The law also ensures employees are aware of their rights and able to seek relief if they've been affected by a violation.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA creates a private right of action (PRA), in addition to its administrative process through LARA. Remedies available to employees include reinstatement, attorney fees and all back pay and benefits (doubled as liquidated damages).</li> <li>• NOTE: The PRA creates massive liability exposure and the opportunity for abusive lawsuits class action litigation.</li> </ul>
<b>STATUTE OF LIMITATIONS</b>	<ul style="list-style-type: none"> <li>• The PMLA requires claims to be filed with LARA within six months of an alleged violation.</li> </ul>	<ul style="list-style-type: none"> <li>• The ESTA requires a violation to be filed within three years of an alleged violation (in court or with LARA or both).</li> </ul>
<b>EFFECTIVE DATE</b>		<ul style="list-style-type: none"> <li>• 205 days after Supreme Court ruling (February, 21<sup>st</sup>, 2025)</li> </ul>