

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.

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Members of the Michigan House and Senate must come together to pass practical and commonsense legislation to lessen the harm of the Supreme Court's decision on paid leave. Michigan is among 17 states that currently have a paid sick leave law and has since 2018. However, the provisions in the Michigan Earned Sick Time Act (ESTA) are some of the most far-reaching and stringent.

We need your help to make sure the ESTA's requirements are workable. Without a fix, employers will be forced to make drastic changes to their paid time off policies – even if they have a policy that meets or exceeds what's required under the Act. While employers will be forced to make significant changes, it is employees who will ultimately lose (benefits, flexibility, jobs, etc.).

