

Implications of the Earned Sick Time Act, Minimum Wage Increase & Phase Out of Tip Credit

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The Michigan Supreme Court's “Adopt and Amend Decision”

This was a question of legislative procedure wherein the Michigan Supreme Court decided that the 2018 Minimum Wage and Paid Sick Leave law changes were not constitutional. The decision was 4-3 and came down along party lines.

Effective Date

February 21, 2025, with additional changes each February 21st through 2029.

It is important to note that you do not have to change anything before February 21, 2025. But you should prepare.

3 Big Changes

A series of increases in the regular minimum wage (currently \$10.33/hour)

A phase out of the tipped wage credit (currently 38% of minimum wage)

A specific and complex Paid Sick Leave benefit

Anticipated Interpretation of Minimum Wage

On January 1, 2025 the minimum wage will increase to \$10.56. On February 21, 2025, it will increase again to \$12.48.

Original Year	Original Wage	Adjustment Value	New Year	New Wage	New Tipped Wage
2019	\$ 10.00	1.24752	February 21, 2025	\$ 12.48	48%
2020	\$ 10.65	1.24752	February 21, 2026	\$ 13.29	60%
2021	\$ 11.35	1.24752	February 21, 2027	\$ 14.16	70%
2022	\$ 12.00	1.24752	February 21, 2028	\$ 14.97	80%

*For 2029 and each year after, the tipped wage will be completely phased out, and the minimum wage will be adjusted for inflation.

Paid Sick Leave

Current Law (before the decision)

Businesses with 50 or more employees must provide paid sick leave of at least 40 hours per year.

Businesses with fewer than 50 employees are exempt from this requirement.

The Change (after February 21, 2025)

Businesses with 10 or more employees must provide employees at least 1 hour of paid sick leave for every 30 hours worked, up to 72 hours total each year.

Businesses with 1-9 employees must provide at least 1 hour of paid sick leave for every 30 hours worked, up to 40 hours total per year. These businesses must also provide an additional 32 hours of unpaid leave each year, if accrued.

Frequently Asked Questions & Department of Labor & Economic Opportunity Interpretations

What employers are covered by the act?

- All Michigan employers that have one or more employee, excluding employees of the United States Government.
- The ESTA applies to work performed by employees who are physically located in Michigan, regardless of the employer location.

How to determine if an employer meets the 10-employee threshold?

- An employer meets the 10 employee threshold if it employs 10 or more employees in 20 or more workweeks in the current or previous calendar year. The 20 workweeks need not be consecutive. This includes full-time, part-time, and temporary employees including those provided through a temporary service or staffing agency or similar entity.
- Once an employer meets the 10 or more-employee threshold, the employer will remain covered until the remainder of the current and following calendar year or no longer meets the definitions in the first bullet.

What employees are eligible to receive earned sick time?

- An eligible employee is an individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes.

When does an eligible employee begin to accrue earned sick time?

- Accrual begins on February 21, 2025, or upon commencement of the employee's employment, whichever is later.

What is a benefit year?

- A benefit year is a regular and consecutive twelve-month period, as determined by the employer.

May an employee carry over unused earned sick time from one benefit year to the next?

- Yes. Any unused earned sick time carries over from year to year; however, an employer is not required to permit an employee to use more than the annual allowed maximum time (paid or unpaid) in a 12-month period.
- Employers cannot payout unused sick leave to avoid carrying it over

May an employer provide the total amount of earned sick time all at once?

- There is no prohibition in the law preventing an employer from providing the total amount of sick time at the beginning of the 12-month period provided it complies with the accrual, use, carryover, and other provisions of the Act during the benefit period.

What is the accrual for hourly and salaried employees?

- For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under the FLSA is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours.

When is earned sick time available for use by an eligible employee?

- An employee may use earned sick time as it is accrued except an employer may require an employee to wait until the 90th calendar day after commencing employment before using accrued earned sick time.

Does earned sick time have to be taken in 1-hour increments?

- Maybe. The Act provides that earned sick time may be used in the smaller of hourly increments or the smallest increment of time used by the employer's payroll system for absences or use of other time.
- For example, if an employer uses 1/10th (6 minutes) of an hour for tracking attendance/absences, then this would be the incremental use allowed for earned sick time.

When can an eligible employee use earned sick time?

- An employer shall permit an employee to use the earned sick time accrued for any of the following:
 - The employee's or the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.
 - If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.
 - For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; or
 - For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease.
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Who is considered a family member?

- Family member includes:
 - Biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis
 - Biological parent, foster parent, stepparent, adoptive parent, or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child. Grandparent
 - Grandchild
 - Biological, foster, and adopted sibling
 - Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Can an employer require an employee to use other employment benefits, such as vacation pay, in lieu of or prior to using earned sick time?

- An employer's paid time policies, that provide at least the same amounts as that provided in the Act and may be used for the same purposes and under the same conditions and that is accrued at a rate equal to or greater than the rate described in the act may be in compliance.
- For small employers, employees must be allowed to use paid earned sick time before using unpaid sick time provided for under the Act.

What is the required wage rate for earned sick time?

- Earned sick time must be paid at a pay rate equal to the greater of either an employee's regular rate of pay or the Michigan minimum wage rate. The regular rate for a tipped employee is the applicable full minimum wage rate.
- For any employee whose hourly rate varies depending on work performed, the "normal hourly wage" means the average hourly wage of an employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.

Does accrued, unused earned sick time need to be paid upon termination of employment?

- No. Employees do not need to be paid for unused accrued earned sick time at separation under the Act. However, there may be other laws, such as 1978 Public Act 390, the Payment of Wages and Fringe Benefit Act, that may require payment upon termination pursuant to the employer's written policy or contract.

Does an employee lose accrued hours if laid off, terminated, or transferred to another location?

- Employees separated from employment for 6 months or less maintain all accrued earned sick time prior to the separation, begin accruing additional hours upon reemployment, and may use any accrued hours
- Employees separated from employment with the same employer for more than 6 months lose all accrued, unused earned sick time, unless the employer's policy allows these hours to be maintained

Can an employer require an employee to provide notice of and documentation for the use of earned sick time?

- If the need for earned sick time is foreseeable, an employer may require advance notice not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time.
- If the need for earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable.
- For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that the earned sick time has been used for a purpose covered by the Act. Upon request the employee must provide this documentation in a timely manner.
- Employer required documentation should not include a description of the illness or details of the violence.
- If an employer requires documentation, it is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation.
- An employer cannot delay commencement of the leave based on a failure to receive documentation.

May an employer ask questions regarding the need for using earned sick leave?

- When using leave under ESTA, employees should provide sufficient information for the employer to determine whether the leave meets the eligible uses under the ESTA.
- If an employer is unsure, they may ask additional questions about the nature of the leave to determine if the leave meets the eligible uses.

Does the employer have a duty to maintain the confidentiality of the information provided by the employee?

- Yes. Employers must maintain the confidentiality of health, domestic violence, sexual assault information about an employee or his or her family member and cannot disclose the information to others without the employee's permission.

What recourse does an employer have for an employee failing to follow established notice and documentation policies?

- Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements.
- Employers may not retaliate against an employee for engaging in activity protected by the act. Importantly, there is a rebuttable presumption that an employer violated the act if it takes any adverse personnel action against an employee within 90 days after the employee engages in protected activity.

What are employer recordkeeping requirements under the act?

- Employers must retain records that document the hours worked and earned sick time taken by employees for not less than 3 years; These records shall be available to the Wage and Hour Division with appropriate notice and at a mutually agreeable time.

Does the Earned Sick time Act contain a notice or posting requirement?

- Yes, Employers must provide written notice of an employee's rights under the act at the time of hiring or on or after February 21, 2025, whichever is later. Required notice contents can be found at www.michigan.gov/wagehour.
- Employers are also required to display a poster at the place of business. The department shall create the poster which can also be found at www.michigan.gov/wagehour.

What remedy is available to employees or others who believe an employer has violated the act?

- A claim may be filed with the Wage and Hour Division within 3 years of the alleged violation date. An investigation will be completed, and mediation attempted if appropriate. If a violation is found, the department may award all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any and all damages incurred by the complainant as a result of violation of this act, back pay and reinstatement in the case of job loss.

What penalties are imposed against an employer for violating the act?

- An employer who fails to provide earned sick time is subject to a \$1,000.00 administrative fine. An employer who willingly violates the posting requirement is subject to a \$100.00 administrative fine for each separate violation.

Top Five Changes SBAM is Advocating For

- Employers with paid leave policies that meet or exceed the number required under the act, including all forms of paid leave, be exempt.
- There be a small employer exemption or expand the current small employer threshold. There is already good precedent set to exempt employers with fewer than 50 employees under the federal Family Medical Leave Act.
- Time should be limited to use in four-hour/half-day increments and notification be required prior to the start of a shift unless the employee is incapacitated.
- The Act allows employees to sue businesses and automatically assumes the employee's side for unfavorable personnel actions via a rebuttable presumption. Our ask is to remove this language and leave enforcement and penalties to the state.
- Allow for frontloading to allow maximum flexibility that better serves employers and employees and eliminates the complexities of a monumental tracking system.

Take Action Now

By delaying implementation until February 21, 2025, the Supreme Court has hypothetically given the legislature time to act.

Please contact your legislators and the Governor and ask them to moderate these impacts!



Questions