LEGAL UPDATES

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Preparing for Changes to Paid Sick Leave in Michigan: Moving from the PMLA to the ESTA

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On July 31, 2024, the Michigan Supreme Court ruled in a 4-3 decision that the Michigan Legislature violated the state constitution in *Mothering Justice v. Attorney General*, when it applied an "adopt-and-amend" approach in enacting and subsequently amending voter-initiated proposals within the same legislative session. This ruling marks a significant shift for Michigan employers and reinstates the 2018 voter-initiated version of the Earned Sick Time Act (ESTA), which generally provides for more paid sick leave and requires compliance from smaller employers who were previously exempt. The ESTA is set to become the broadest paid leave law in Michigan's history, given its extensive coverage and complex usage guidelines.

The paid leave ballot proposal, initially adopted as the ESTA, will be reinstated effective February 21, 2025, replacing Michigan's Paid Medical Leave Act (PMLA). By this date, all covered employers must either amend their existing paid leave policies or implement new ones to comply with the ESTA. In considering whether an employer's leave policies for Michigan employees is compliant under the ESTA, employers need to consider whether they are now considered a covered employer, how sick leave accrues, employee eligibility for earned sick time, and an employee's use of earned sick time, among many other considerations. Although we will likely see further clarifications on the provisions of the ESTA from the state, and there remains uncertainty regarding the implementation of the new law, highlighted below are certain key differences between the ESTA and the PMLA:

	Earned Sick Time Act *As originally passed in 2018; going into effect February 21, 2025*	**Paid Medical Leave Act** *As amended in 2019; valid until February 20, 2025*
Definitions	Earned Sick Time	Paid Medical Leave
	"Employee" is defined broadly, with only one stated exception for individuals employed by the U. S. government.	"Employee" is defined narrowly, with many stated exceptions, including: FLSA exempt employees, public employees, those covered by a collective bargaining agreement (as of the effective date, but subject to change upon expiration of the agreement), an individual employed by the U.S. government, and employees working 25 weeks or less in a calendar year, among others.
	"Employer" is defined broadly and includes all employers who employ one or more employees (excluding the U.S. Government). Note: "small businesses" (those employing less than 10 employees) are distinguished from other employers, which employ 10 or more employees.	"Employer" is defined narrowly and is limited to employers which employ 50 or more individuals.
	"Domestic Partner" and "[a]ny other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship" are included within the definition of "Family Member." "Domestic Partner" means an adult in a committed relationship with another adult,	"Domestic Partner" and equivalent family relationships are not included within the definition of "Family Member."

	including both same-sex and different-sex relationships.	
	"Retaliatory Personnel Action" means any of the following: (i) Denial of any right guaranteed under this act. (ij) A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act. (iij) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act. Such acts are strictly prohibited by employers against employees exercising or attempting to exercise their earned sick time rights.	"Retaliatory Personnel Action" is not included.
Permitted Reasons for Leave	Includes "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."	Meetings at a child's school or place of care are not included.
Accrual and Use of Leave for Businesses Employing Less than 10 Employees ("Small Businesses")	Employees accrue 1 hour of earned sick time per 30 hours worked. Employees are not entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit.	Employees do not accrue paid medical leave if their employer employs less than 50 employees.
Accrual and Use of Leave for Businesses	Employees accrue 1 hour of earned sick time per 30 hours worked. Employees are entitled to use 72 hours of paid earned sick time per year,	Employees working at businesses employing 50 or more employees accrue 1

Employing 10 or More Employees	unless the employer selects a higher limit.	hour of paid medical leave per 35 hours worked. Employees may not use more than 40 hours of paid medical leave in a year, unless the employer selects a higher limit.
Carry Over/Payout upon Separation	Employees may carry over all accrued but unused earned sick time from year to year, but an employer is not required to permit employees to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a year (for small businesses), or 72 hours of paid leave (for other employers). This ESTA does not require payout of accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.	Employees are only permitted to carry over 40 hours of accrued but unused paid medical leave from year to year, unless the employer selects a higher limit. Usage may be capped at 40 hours per year. The PMLA does not require payout of unused accrued paid medical leave that was not used upon the employee's separation from employment.
Front Loading	While not explicitly provided for, employers are presumed to be in compliance if the employer provides employees with earned sick time in at least the same amounts as employees would otherwise accrue under the ESTA. We expect further guidance on this front.	Employers are allowed to front-load and prorate an employee's paid medical leave allowance. In such a case, employers do not have to allow carry over.*
Effect on Collective Bargaining Agreements	For employees covered by a Collective Bargaining Agreement (CBA) as of the effective date of the ESTA, employees will be eligible for earned sick time as of the CBA's initial expiration date.	Employees covered by a CBA were not eligible for paid medical leave until the stated expiration date in the collective bargaining agreement in effect as of the

		March 29, 2019 effective date of the PMLA.
Doctor's Notes	Employers are only permitted to request a doctor's note after an employee has been absent for more than three consecutive days. If requested by the employer, employees must provide a doctor's note in a "timely manner." If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the healthcare provider for providing the specific documentation required by the employer.	Employers may request that employees provide a doctor's note at any point if that is the employer's usual and customary practice. In such cases, employers must give employees at least three days to provide a doctor's note.
Increments of Leave	Earned sick time may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time.	Paid medical leave must be used in 1-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.
Reinstatement of Accrued Time Upon Re-Hire	Employers are required to reinstate any accrued but unused earned sick time that a former employee had if they are re-hired within six months.	Employers are not required to reinstate any accrued but unused paid medical leave that a former employee had if they are rehired at any point.
Remedies – Civil Action	If an employer violates the ESTA, employees have three years to bring a civil action for	Employees are not permitted to bring civil

	payment of used earned sick time; rehiring or reinstatement to the employee's previous job, payment of back wages, reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount of liquidated damages, together with costs and attorneys' fees.	actions for employer violations.
Remedies – Filing a Claim with the Department of Licensing and Regulatory Affairs	If an employer violates the ESTA, employees have **three years** to file a claim with the department, but filing a claim is not a prerequisite or bar to bringing a civil action. The department will investigate any claim. The department may impose penalties and civil fines (up to $1,000) and grant to an employee or former employee earned sick time previously withheld, any and all damages incurred by the complainant as a result of the violation, back pay, and reinstatement in the case of job loss.	If an employer violates the Act, employees have **six months** to file a claim with the department. The department will investigate any claim. The department may impose penalties and administrative fines (up to $1,000) and grant an eligible employee or former eligible employee payment of all paid medical leave improperly withheld.
Rebuttable Presumption of Non-Compliance	There is a rebuttable presumption of a violation of the ESTA if an employer takes adverse personnel action against a person within 90 days after that person: (a) Files a complaint with the department or a court alleging a violation of this act; (b) Informs any person about an employer's alleged violation of this act; (c) Cooperates with the department or another person in the investigation or prosecution of any	No rebuttable presumption of violation.

	alleged violation of this act; (d) Opposes any policy, practice, or act that is prohibited under this act; or (e) Informs any person of his or her rights under this act.	
Notice Requirements	Employers must provide employees at the time of hire a written notice of the earned sick time policy, how the employer calculates the sick time benefit year, and the employee's right to bring a civil action or file a claim with the department. Notice must be provided in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language. Employers are also required to display notice at the employer's place of business in a conspicuous and accessible location, with the same language requirements stated above.	Employers are not required to provide written notice of paid medical leave at the time of hire. Employers are only required to display notice at the employer's place of business in a conspicuous and accessible location, with no specific language requirements.
Records Retention Requirements	Employers must retain records documenting the hours worked and earned sick time taken by employees for at least three years.	Employers must retain records documenting the hours worked and paid medical leave taken by employees for at least one year.

**Note also that under the PMLA, there is 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. Meaning that employers who have an overarching PTO policy that allows for leave set forth under the PMLA did not necessarily have to create a separate medical leave bank.*

Although the Michigan Supreme Court's ruling reinstates the original ESTA initiative, it also stated that the legislature may amend it "as it sees fit" in subsequent sessions. The current legislative

session, which extends until December 31, 2024, qualifies as a subsequent session, which means that the Michigan Legislature could create and pass new legislation to amend the original ESTA before the February 2025 effective date—or in subsequent sessions. However, whether the legislature will decide to do so remains unclear. In the meantime, employers should begin evaluating their existing paid leave policies to ensure they will come into compliance with the ETSA before February 21, 2025. Employers of employees subject to a CBA should make note of CBA expiration dates on or after February 21, 2025 and begin planning for upcoming changes affecting their unionized workforce.

Contact us

If you have any questions about the upcoming transition from the PMLA to the ESTA, please contact Erik Eisenmann, Randy Thompson, Tom Cedoz, Zoey Mayhew, Marina Fleming, Ayissa Maldonado, Dani Kandalaft,or your Husch Blackwell attorney.