

ESTA 2.0

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**EARNED SICK TIME ACT
(ESTA)**

Last Minute Legislation

- Just before the February 21, 2025 effective date of ESTA and IWOWA, the legislature proposed and passed changes to both acts.
- Senate Bill 8 (IWOWA) passed on February 19, 2025 and was tie barred with House Bill 4002.
- House Bill 4002 (ESTA) passed just before midnight on February 20, 2025.
- Both bills were signed by the Governor and became law on February 21, 2025.

BROADER EMPLOYER AND EMPLOYEE DEFINITIONS

ESTA

- **Covered Employer**
 - Employs 1 or more individuals.
 - Virtually All Michigan Employers (except for Fed. Gov't)
- **Small Business**
 - Employs fewer than 10 individuals.
- **Eligible Employees Include**
 - Part-time employees; and
 - Employees staffed by temporary help firm.

EXEMPTIONS:

- *Employees under 18 years old.*
- *Unpaid interns, trainees, independent contractors, and workers setting their own schedules.*

MORE LEAVE PROVIDED

ESTA

IMPORTANT UPDATES FROM HB 4002

- **Small Employers (<10)**

- Accrue 1 hour for every 30 hours worked.
- 40 hours paid leave.
- 40-hour max use per year.
- Must allow use of paid leave before unpaid leave.

- **Large Employers (more than 10)**

- Accrue 1 hour for every 30 hours worked.
- 72 hours paid leave.
- 72-hour max use per year.

- *Under the accrual method, employees may carry over up to 72 hours.*
- *Under the frontload method, if an employer frontloads 72 hours at the beginning of the benefit year, no carryover is required, and the employer is not required to track the amount of paid sick time an employee would have accrued.*
- *When frontloading to a part-time employee, the employer must provide the part-time employee with a written notice of how many hours the part-time employee is expected to work, the amount of time frontloaded must be proportional to the amount the employee would have accrued under the accrual method, and additional sick time is added if the part-time employee works more than is expected.*

DELAYED COMPLIANCE

- **Delayed Compliance for Small Businesses:** Businesses with 10 or fewer employees have until **October 1, 2025**, to comply.
- New businesses (hiring their first employee after February 21, 2025) get a three-year compliance window.

BROADER USE PERMITTED

ESTA

- **Employers Required to Permit Use for:**
 - Employee’s mental or physical illness;
 - Family members’ mental or physical illness;
 - Domestic Violence issues;
 - Meeting about child’s health or disability; and
 - For closure of employee’s place of business by order of public official due to public health emergency.
- **Expanded Definitions**
 - Family Member – related by blood; or *whose close association with the employee is the equivalent of a family relationship.*
 - Domestic Partner – individuals of any sex who share significant responsibilities for each other.

MORE COMPLEX

ESTA

- **Calculating Pay for Leave**
 - Rate equal to average hourly wage in immediately preceding pay period.
- **Increments of Leave**
 - Hourly increments; or
 - Smallest increment payroll system uses to account for absences or other time.
- **Separation of Employment**
 - No payout required.
 - Rehired in 6-months = reinstate accrued leave.

Clarifications

- *HB 4002 clarified that Sick time is paid at the employee's normal hourly rate (excluding variance in pay caused by overtime, bonuses, commissions, etc.).*
- *1 hour increments permitted (or smallest increment used for accounting absences)*
- *If paid out, no reinstatement required if rehired within 2 months.*

EMPLOYEE NOTICE AND DOCUMENTATION

ESTA

- **Required Notice Prior to Leave**
 - Foreseeable Leave – no more than 7 days notice.
 - Unforeseeable Leave – as soon as practicable.
- **Documentation After Leave**
 - Only permitted to require documentation if leave is for 3 or more consecutive days.
 - Must permit employee to provide documentation *within 15 DAYS*.
 - Documentation need not be detailed.
 - Employer responsible for out-of-pocket costs of employee obtaining requested documentation.

EMPLOYER NOTICE AND DOCUMENTATION

ESTA

- **Required to Display Poster**
 - **Required to Inform Employees in Writing:**
 - Amount of leave required under Act;
 - Terms of employer's policy; and
 - **General PTO Policies**
 - Permitted if general leave is accrued at rate equal to leave provided by the Act.
 - **Record Retention**
 - 3 years of hours worked and leave taken.
- HB 4002 affords all employers 30 additional days to post posters and provide employees with their ESTA-compliant policy.

NEW REMEDIES FOR VIOLATIONS

ESTA

- **Statute of Limitations**
 - 3 years after violation occurs.
- **Potential Actions**
 - Department of Licensing & Regulatory Affairs
- **Potential Liability**
 - Employers who fail to comply with ESTA could face civil fines of up to **8 times the employee's normal hourly wage.**
 - Retaliation fines of up to **\$1,000** per violation still apply.
 - Back pay, reinstatement, etc.

Amendments

- **HB 4002 got rid of the private right of actions.**

RETALIATION PRESUMED

ESTA

- **Retaliation Against Employees Prohibited for:**
 - Using earned sick time;
 - Complaining or informing others of violations;
 - Cooperating with Department in investigations; and
 - Informing others of their rights under the Act.
- ***HB 4002 got rid of the Rebuttable Presumption of Retaliation.***

LABOR CONTRACTS

- If Labor Contract in effect as of Feb. 21, 2025 and Contract does not conflict with ESTA, then:
 - ESTA applies immediately
- If Labor Contract in effect as of Feb. 21, 2025 and Contract conflicts with ESTA, then:
 - ESTA applies on Expiration Date
 - **“Conflict” = includes terms related to sick time, sick leave, PTO with use for sick time, or a similar benefit, or specifically excludes.**
 - **“Silent” = does not conflict.**

**IMPROVED WORKFORCE
OPPORTUNITY WAGE ACT
(IWOWA)**

Changes to IWOWA

- Effective February 21, 2025, the minimum wage is **\$12.48**.
- Senate Bill 8 passed last week and amended the Improved Workforce Opportunity Wage Act to have the tipped wage credit will slowly increase from 38% of the minimum wage to 50% of the minimum wage in 2031.
- The overall minimum wage will increase slightly faster than the current path for the years 2025, 2026, and 2027, and then be set to inflation.

Questions?

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