



NEW(ER) MANDATORY SICK LEAVE RESPONSIBILITIES

The Earned Sick Time Act (“ESTA”) was set to go into effect at midnight, February 21, 2025. In a last-minute legislative compromise, the House and Senate passed amendments with less than an hour to spare before the effective date. Briefly, the ESTA, which did become effective on February 21, requires **all employers (regardless of employee count)** to provide paid sick time to *virtually** **all employees** (regardless of part-time, seasonal, or temporary status).

Unfortunately, even as amended, the ESTA is not perfectly drafted and lacks clear answers to some important questions you will have. These laws set the minimum legal requirements and employers are always permitted to do more than is required, if your business can support that.

The MRLA is actively monitoring information coming out of the State of Michigan’s Department of Labor and Economic Opportunity (LEO), the agency tasked with enforcing and interpreting the ESTA. This FAQ is based on the interpretations of MRLA’s labor and employment counsel as of the date of publication.

Q#1: WHICH EMPLOYERS WILL BE REQUIRED TO PROVIDE PAID SICK TIME?

A: All Michigan employers—no exceptions. Unlike the 2019 Paid Medical Leave Act and most other employment laws, the ESTA has no minimum employee threshold and applies to any business that employs one or more individuals. The number of employees will determine the amount of sick time an employer must permit an employee to use.

Q#2: WHO IS ENTITLED TO PAID SICK TIME?

A: All employees, regardless of their status, are entitled to receive and use paid sick time: full-time, part-time, seasonal, variable hour, and temporary staff. The ESTA’s **extremely limited** exemptions to this are:

1. An individual employed by the United States government.
2. An unpaid trainee or unpaid intern.
3. A minor covered by the Michigan’s youth employment law.
4. An individual who works in accordance with a policy of an employer **if the policy**:
 - a. Allows the individual to schedule the individual’s own working hours AND
 - b. Prohibits the employer from taking adverse personnel action against the individual if the individual does not schedule a minimum number of working hours.

Contact your expert employment counsel to assess your employees’ entitlement or exemption under the ESTA.



Q#3: ARE 1099 CONTRACTORS ENTITLED TO PAID SICK TIME?

A: No. A *properly classified* independent contractor is not entitled to any benefits under the ESTA. Check with employment counsel to ensure that you have properly classified someone as an independent contractor to avoid liability for misclassification.

Q#4: I HAVE HEARD THAT SEASONAL EMPLOYEES ARE NOT ENTITLED TO PAID SICK TIME. IS THAT TRUE?

A: No, however, the ESTA does permit employers to prohibit a new hire's use of sick time until after 120 days of employment. For many seasonal workers, they will be finished for the season by the time they hit their 120th day. And employers are not required to restore or maintain a sick bank for any employee who has been separated for 2 or more months. So, even if that employee is rehired more than 2 months later, their sick bank can be reset to zero and the employee must wait another 120-day period to use sick time.

Q#5: MY EMPLOYEES' SCHEDULES ARE VARIED – ARE THEY ENTITLED TO SICK TIME?

A: Yes, they are. Although an earlier version of the amendments to the ESTA would have exempted variable hour employees from eligibility, that was left on the cutting room floor.

Q#6: HOW MUCH PAID SICK TIME AM I REQUIRED TO PROVIDE?

A: The answer to this depends on how many employees you have!

- More than 10 employees? 72 hours per year
- 10 or less employees? 40 hours per year

How you provide time is also important.

- The ESTA, as amended, expressly allows employers to frontload at least 72 hours of paid sick time per year (or 40 hours for small businesses), for immediate use, to satisfy the ESTA's leave requirement. Sick time must be available for use immediately.
- If paid sick time is not frontloaded, employees still must accrue 1 hour of paid sick leave for every 30 hours worked, as provided in the chart above, without limit. However, employers may still cap usage at 72 hours per year and impose up to 120 calendar days' waiting period before using any accrued sick time.

Employers can always allow employees to use more sick time than the ESTA requires but cannot limit an employee's use of sick time to less than the 40 or 72, as required by their



size business. For example, if you are a small business (you have 10 or fewer employees) and Employee X has already used 40 hours of paid sick time, your policy can deny that employee's use of additional sick time even if there are still sick time hours in their bank.

Finally, the previous version of the ESTA required small businesses to provide an additional 32 hours of *unpaid* leave to employees. This is no longer required. The ESTA only requires employers to provide the prescribed amounts of *paid leave* under the Act.

Q#7: HOW DO OVERTIME-EXEMPT, SALARIED EMPLOYEES GET PAID SICK TIME IF THEY DO NOT WORK A SET SCHEDULE OR ARE NOT REQUIRED TO TRACK THEIR TIME?

A: The answer depends on whether you elect the accrual or frontloading method. For the accrual method, properly classified exempt employees will be assumed to work 40 hours per week and accrue time based on that assumption, unless their ordinary schedule is less than 40 hours.

The amended ESTA also permits employers to frontload paid sick leave to its employees. Small businesses may front load 40 hours of sick leave, and all other employers may choose to frontload 72 hours of sick leave at the start of the benefit year. If frontloading, the employer is **not** required to track accrual of sick leave throughout the year.

Q#8: CAN I FRONTLOAD SICK LEAVE FOR SOME EMPLOYEES AND USE THE ACCRUAL METHOD FOR OTHERS?

A: LEO confirms the answer is yes, so long as there is a legitimate (non-discriminatory, non-arbitrary) distinction between the employees. For example, you might want to frontload time for its full time employees, but allow part-time employees to accrue their time.

Q#9: WITH FRONTLOADING, CAN I PRORATE THE AMOUNT OF SICK LEAVE FOR PART-TIME EMPLOYEES OR EMPLOYEES THAT START LATER IN THE BENEFIT YEAR?

A: Yes.

Employers may prorate the frontloaded amount for *part-time employees* based on an estimate of how many hours those part-timers will work in a year. The key here is that: 1) employers will need to accurately estimate the part-time employee's hours for the entire year, and inform the employee of this estimation in writing prior to the proration, and 2) if the part-time employee works more than the employer estimated, the employer will have to track and provide those additional accrued hours.



In addition to the above, LEO's updated [FAQs](#) confirm that employers are permitted to front load sick time hours to newly hired employees on a prorated basis based on the date the individual becomes eligible during a benefit year.

Q#10: WHEN DOES THIS TAKE EFFECT?

A: One major distinction between the amended ESTA and the original ESTA is that small businesses now have until **October 1, 2025** to comply with several ESTA requirements, including the accrual or frontloading of paid earned sick time and the calculation and/or tracking of earned sick time.

For all other employers, employees must be granted their frontloaded time or permitted to accrue sick time immediately.

All employers must provide written notice of an employee's rights under the ESTA at the time of hiring or on March 23, 2025, whichever is later. The poster which satisfies this written notice requirement can be found [here](#).*

**Please note that, as of Feb. 26, 2025, the most updated version of the poster provided by the State of Michigan contains inaccurate information. When and if the poster is updated with accurate information, we will update this link.

Q#11: HOW MANY HOURS OF SICK TIME DOES AN EMPLOYEE GET WHEN THEY CALL IN SICK FOR THE DAY?

A: The employee should be charged for the number of hours that they were scheduled to work (even if employees are sometimes asked to stay over or to come in early). Otherwise, employees must be permitted to use sick time in at least one-hour increments. However, if your payroll software utilizes partial hours, employees may also be permitted to use their sick time in the smallest increment of time you use to track time in that software. For example, if you pay wages to the nearest quarter-hour, you could provide for use in quarter-hour increments, by policy.

We will watch LEO publications closely to understand if the agency intends to *require* employers to allow that lesser increment of use.

Q#12: DO PAID SICK TIME HOURS CARRY OVER FROM YEAR TO YEAR?

A: It depends on whether your business is frontloading time or using the accrual method. **For Frontloaded Time:** There is no obligation to permit a carryover from year to year or to pay out unused time at the end of the year; unused time can simply be considered forfeit. A business may certainly still decide to require or permit some amount of carryover or to pay out employees for unused time.



For Accrued Time: Accrued but unused paid sick time hours must be allowed to carryover at least 40 hours of carryover (for small businesses) or 72 hours (for all other employers). A business may certainly still decide to require or permit some amount of carryover above those minimums, or to pay out employees for unused time.

None of this changes the fact that you can have a policy that limits how many hours an employee can use in a single year, so long as employees of ESTA defined small businesses must allow at least 40 hours of paid time to be used in a single year and all other employers must allow at least 72 hours to be used in a single year.

Q#13: ARE EMPLOYEES ENTITLED TO BE PAID FOR ACCRUED BUT UNUSED SICK TIME WHEN THEY LEAVE OUR EMPLOY?

A: No. The ESTA does not require that employers pay out any paid sick time no matter the reason someone separates from employment.

Q#14: HOW MUCH IS AN EMPLOYEE PAID WHEN THEY TAKE PAID SICK TIME?

A: When an employee uses paid sick time under the ESTA, they must be paid their “normal hourly wage.” In other words, sick time is paid out at the employee’s base wage – without factoring in additional forms of compensation like tips, bonuses, commissions, overtime, and other supplemental pay. In no case can that be less than the current minimum wage.

This means that for *non-tipped employees*, the answer is simple: their ordinary hourly wage. *Tipped employees* will be entitled to be paid at the regular (not tipped) minimum wage rates for any sick time they take under the ESTA.

Q#15: ARE EMPLOYERS REQUIRED TO CREATE A SEPARATE SICK TIME BANK?

A: No. The ESTA allows any paid time to fulfill the requirements so long as the time can be used for the purposes permitted by the ESTA. (See Question 16) Vacation, personal time, and an all-purpose PTO bank can all count towards the 72-hour requirement for larger employers or the 40-hour requirement for smaller employers. However, if you choose to include sick time in an all-purpose PTO bank, the rules of the ESTA will apply to the makeup and use of that bank. For some employers, it may be the best option to split off a separate bank of sick time. Contact your employment counsel to discuss the ramifications of either decision.



Q#16: IN WHAT SITUATIONS CAN AN EMPLOYEE USE PAID SICK TIME?

A: For their own, or a family member's, illness, injury, medical appointment, care, or preventative care.

If the employee, or a family member, is the victim of domestic violence or sexual assault for medical or psychological care, victim's services or to relocate due to the domestic violence or sexual assault.

To attend a meeting at the employee's 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.

If your place of business is or the employee's child's school or place of care is closed due to a public health emergency, or if a health care provider determines that the employee or a family member is a risk to the health of others due to contact with a communicable disease.

Q#17: CAN I REQUIRE DOCUMENTATION WHEN AN EMPLOYEE CALLS IN SICK?

A: You can only require documentation if after an employee has used sick time for three consecutive workdays. If an employee is absent for one, two, or even three consecutive scheduled workdays, the ESTA does not allow an employer to request documentation. However, if the employee takes a fourth consecutive day off of work, the employer can then request reasonable documentation. The employee must provide the documentation within 15 days, but cannot be denied the use of sick time while waiting on that documentation. Employers must pay all out-of-pocket costs associated with obtaining the documentation.

Q#18: WHAT IF I SUSPECT MY EMPLOYEES ARE USING SICK TIME FOR UNAUTHORIZED PURPOSES?

A: Paid sick time is not intended to be a "get out of work free" card. But given the ESTA's tight restrictions on requesting any information about sick time, you should tread carefully if you suspect abuse of sick time. If, however, you have strong, objective reasons to think sick time is being abused, you can investigate and potentially discipline employees. For example, if an employee calls in sick for a Saturday night shift and you later see photos of that employee at a concert that took place Saturday night, you have an objective basis to question the use of the sick time. On the other hand, if your suspicion is based on a hunch



or based on rumors from other employees, you should steer clear of any adverse employment action to avoid a retaliation claim.

Q#19: CAN I REQUIRE ADVANCE NOTICE OF SICK TIME ABSENCES?

A: Yes. You can require notice up to 7 days in advance of a use sick time that is foreseeable (like for a pre-scheduled appointment).

If the need for sick time is not foreseeable, you can require notice:

- **Notice as soon as practicable** or
- **Sooner if there is an employer (written) policy:**
 - includes call-in rules **and**
 - is given to employees **and**
 - does not require notice before the employee would know of the need for sick time

What this means is that employees could still be disciplined for no-call no-show events **but** if the employee is out for an ESTA purpose and it was not practicable for them to contact you at all, such as if they were incapacitated in the hospital, those absences cannot be held against the employee if they have paid sick time available.

Q#20: WHAT IF MY BUSINESS DOES NOT COMPLY WITH THE ESTA'S REQUIREMENTS, BECAUSE IT IS COST-PROHIBITIVE?

A: Employees can make a complaint with the State Wage and Hour Division within 3 years of the alleged violation seeking: backpay for the missed sick time, rehiring or reinstatement with backpay, reestablishment of employment benefits, attorneys' fees, and an equal amount of those combined damages as a penalty—essentially a double penalty for violation.

In addition, the State may impose fines up to \$1,000 for violations of the sick time provisions and up to \$100 per occurrence for violations of notice obligations.

Remember: any employee who makes a complaint to the State is protected from retaliation. ESTA specifically protects employees who make a complaint, inform someone (internally or externally) of a potential ESTA violation, oppose any potential violation of the ESTA, or inform any coworkers about their rights under the ESTA.