

Update on Michigan's Earned Sick Time Act & the Minimum Wage Law

Thursday, February 27
12–12:45 p.m.



Minimum Wage and Earned Sick Time Changes

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February 27, 2025



MICHIGAN DEPARTMENT OF
LABOR & ECONOMIC
OPPORTUNITY

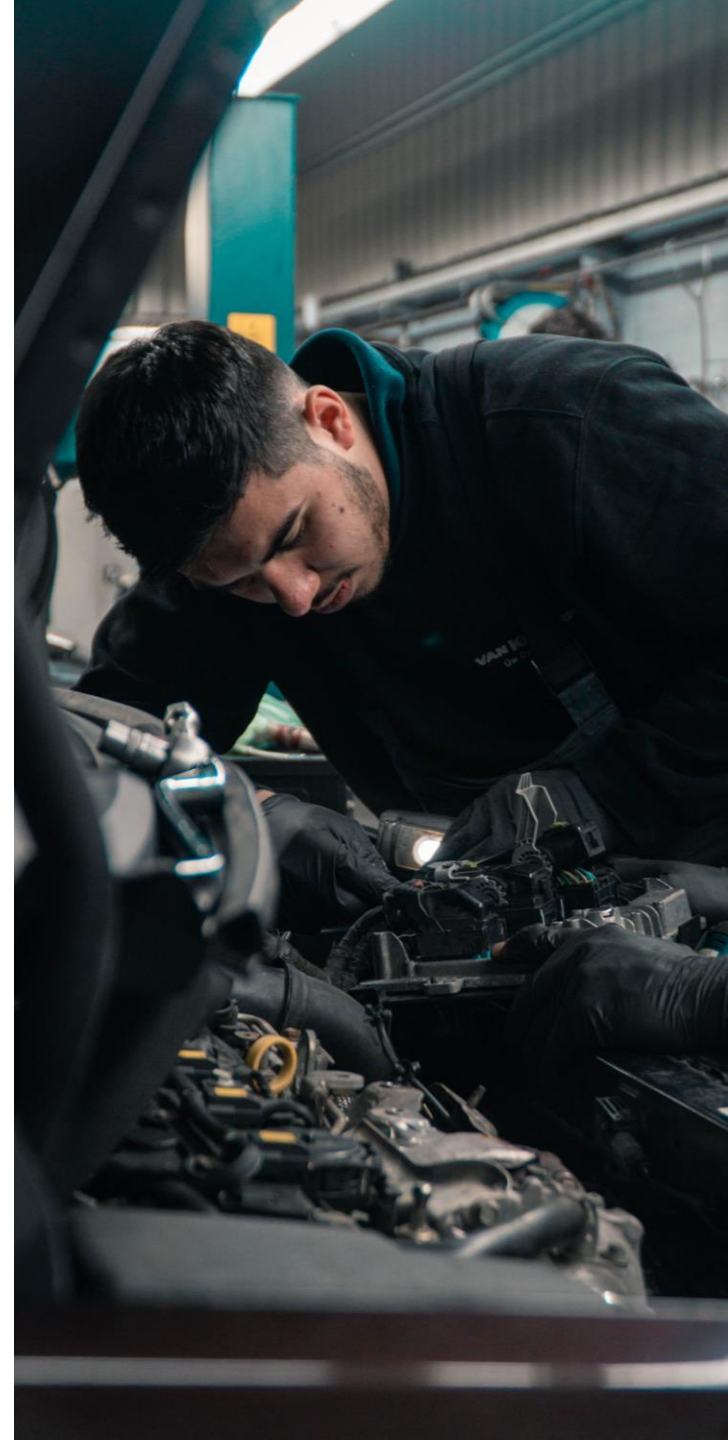
Key Changes to Michigan's Earned Sick Time Act



- **Accrual Method:** Employees accrue 1 hour of paid sick time for every 30 hours worked, and unused paid sick time rolls over up to 72 hours, or 40 for a small business. Employers may limit the use of earned sick time to 72 hours, or 40 for a small business, in the 12-month period.
- **New Hire Waiting Period:** If using the accrual method, employers may have a policy for new employees hired on or after Feb. 21, 2025, requiring these employees to wait up to 120 days before using accrued sick time. Employees accrue earned sick time during this waiting period. If frontloading, hours are available for immediate use.
- **Small Business Compliance:** Small businesses have until Oct. 1, 2025, to comply with ESTA requirements. Small business is defined as an employer having 10 or fewer employees.

Key Changes to Michigan's Earned Sick Time Act (cont'd.)

- **Frontloading Paid Sick Time:** As an alternative to the accrual method, employers can choose to frontload at least 72 hours of paid sick time for immediate use each year, or 40 hours for a small business, which eliminates the requirement for carryover or accrual tracking for full-time employees.
- **Frontloading Part-time Employees:** As an alternative to the accrual method, employers may frontload paid sick time for part-time employees as well, with a prorated amount, subject to specific notice and true-up requirements.





Key Changes to Michigan's Earned Sick Time Act (cont'd.)

- **PTO Policy:** Employers can use a combined paid time off (PTO) policy to meet ESTA requirements, as long as the total paid leave meets or exceeds the necessary amounts and may be used for the same purposes.
- **Hourly Rate:** For ESTA purposes, an employee's hourly rate is their normal hourly wage or base rate and excludes overtime, holiday pay, bonuses, commissions, tips, etc.
- **Enforcement:** The Department of Labor and Economic Opportunity (LEO) is responsible for enforcing ESTA.
- **Sick Time Increments:** Employers may choose to use either one-hour increments or the smallest increment for tracking sick time usage.

Frequently Asked Questions

What employers are covered by the act?

- All Michigan employers that have one or more employee(s), excluding employees of the U.S. government.
- Small business that did not employ an employee on or before Feb. 21, 2022, the small business is not required to comply with this act until 3 years after the date that the employer first employs an employee.
 - **Example:** *Jordan started a small business in October 2024, he employes 2 employees. His employees would begin to accrue earned sick time October 2027.*
- **Exclusion based on Federal Law:** Railway workers and employers covered by the Railroad Unemployment Insurance Act (RUIA) are preempted from coverage under the Earned Sick Time Act.



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.

Michigan case law uses the economic reality test to determine whether an individual is an employee.



Employees Exempted:

- Those employed by the U.S. government,
- Unpaid trainees or unpaid interns,
- Individuals employed in accordance with the Youth Employee Standards Act 1978 PA 90, and
- An individual who works in accordance with a policy of an employer if both of the following conditions are met:
 - The policy allows the individual to schedule the individual's own working hours and;
 - The policy prohibits the employer from taking adverse personnel action against the individual if the individual does not schedule a minimum number of working hours.
- Generally, publicly elected officials, members of publicly appointed boards and commissions, and similar public office holders are not considered employees for purposes of ESTA, even if paid or receiving some form of compensation, unless the governing entity treats these individuals as employees.

How to determine if an employer is a “small business” under the ESTA?

- All employees of the employer within the U.S. or its territories are included for purposes of the total number of employees.
- An employer is considered a “small business” if it employs 10 or fewer employees. This includes full-time, part-time, and temporary employees including those provided through a temporary service or staffing agency or similar entity.



(cont'd)

- Once an employer employs 11 or more employees for 20 or more workweeks in the current or prior calendar year, the employer cannot be a “small business” again until it meets the requirements above.
 - **Example:** *Marie is a local restaurant owner. She employs 8 individuals from January 2025 through March 2025, then employs 12 individuals for any 20 weeks from April 2025 through September 2025. Due to staff leaving for school, her staff size is reduced to 8 employees again starting in October 2025 and continuing indefinitely. Marie’s restaurant was a small business from January 2025 until it reached the 20-workweek threshold. Once they reached the 20 or more workweeks with 11 or more employees' threshold, the restaurant will not be a small business for the remainder of 2025 and all of 2026. Starting in January 2027, Marie’s Restaurant can again be considered a small business.*

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

- **For a small business:** Oct. 1, 2025, or upon commencement of the employee's employment, whichever is later.
- **For all other employers:** accrual begins on Feb. 21, 2025, or upon commencement of the employee's employment, whichever is later.



What notice must the employer provide to employees?

- Sec. 8. (1) An employer subject to this act shall provide written notice to each employee at the time of hiring or **not later than 30 days** the effective date of the 2025 amendatory act that amended this section, whichever is later, including, but not limited to, all of the following:
 - *The amount of earned sick time required to be provided to an employee under this act.*
 - *The employer's choice of how to calculate a year as that term is defined under section 3.*
 - *The terms under which earned sick time may be used.*
 - *That retaliatory personnel action taken by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.*
 - *The employee's right to file a complaint with the department for any violation of this act.*
- The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, if the department has translated the notice into that language.
- Workplace Poster



What effect does the ESTA have on collective bargaining agreements on or after Feb. 21, 2025?

- If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the stated expiration date in the collective bargaining agreement.
- **Upon Expiration: The collective bargaining agreement includes terms regarding sick time or sick leave benefits:** Provided that the collective bargaining agreement includes terms related to sick leave, sick time, PTO with uses for sick time, or a similar benefit, the collective bargaining agreement terms apply, even if the benefit is less than what is required by the ESTA, until the agreement expires or is renewed, extended, or otherwise renegotiated. The agreement also applies in situations where the agreement expressly excludes sick leave benefits.
- **Immediate: The collective bargaining agreement is silent as it relates to sick time or sick leave benefits:** Employees covered by a collective bargaining agreement that is completely silent on sick leave, either for the entire unit or for specific classifications covered by the agreement, are covered by the ESTA and begin accruing benefits on Feb. 21, 2025, unless they are a small employer as outlined above.



Key Changes to Michigan's Minimum Wage



- **Regular minimum wage:** [Senate Bill 8](#) keeps the minimum wage to \$12.48 starting Feb. 21, reaching \$15 by 2027, and adjusts for inflation after that.
- **Tipped minimum wage %:** [Senate Bill 8](#) gradually increases the minimum cash wage for tipped employees from 38% of the full minimum wage to 50% of the regular minimum wage by 2031.
- **Tipped minimum wage:** Tipped minimum wage is \$4.74 for the rest of 2025.

Tip “Credit”

- Employer obligated to pay full minimum wage, can offset obligation by “crediting” tips received against the obligation not below the floor (currently 38% or \$4.74 for 2025).
- Employer obligated to make up the difference between tips received and full minimum wage:
 - *Tipped minimum wage, plus tips received, must equal the full minimum wage per hour or employer must make up the difference.*
- Management and supervisors cannot participate in tips directly or through tip pools:
 - *“Tip pools” have very specific requirements:*
 - *“Tip Pools,” or sharing of tips by the tipped employee may occur only if voluntary on the part of the employee receiving the tips.*
 - *If employer is not claiming the tip “credit”, meaning the employer pays the full minimum wage or higher, then tips can be shared with other staff (e.g., cooks, table bussers, etc.)*
- Tipped employees must be engaged in “tipped activities” 80% or more for the tip credit application, otherwise full minimum wage. Tipped activities are directly related to those that receive tips (e.g., serving patrons).



For more information visit,
Michigan.gov/EarnedSickTime



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