



State & Local Compliance Update

USI EMPLOYEE BENEFITS

August 27, 2024

Michigan 2025 Changes to Paid Leave

On July 31, 2024, in *Mothering Justice v. Attorney General*,¹ the Michigan Supreme Court ruled that a process and procedure used by the legislature to amend two ballot initiatives was unconstitutional. By ruling the amendments unconstitutional, the Improved Workforce Opportunity Wage Act (“Wage Act”)² and the Earned Sick Time Act (“ESTA”)³ revert to the original provisions approved on the 2018 ballot. This means higher minimum wage and increased sick leave for employees starting on February 21, 2025.

Most Michigan employers will now be required to offer 72 hours of sick leave annually to employees.

- An employee is now broadly defined with only one exception for individuals employed by the federal government.⁴ Employees include seasonal, temporary, part-time, leased, full-time and any other employee classification created by the employer. There is no minimum age for an employee to accrue hours; this does apply to minors.
- Regarding paying employees for this time, there is a distinction between employers with fewer than ten employees and those with more than ten employees. The Department has not issued final guidance regarding counting of employees for out-of-state employers, but anticipates the number of employees will be based on all employees on payroll and is not limited to counting employees located in Michigan. However, only Michigan employees are entitled to the benefits.
 - Employers with less than ten employees need to pay for at least 40 hours of sick leave.
 - Employers with more than ten employees must pay for all 72 hours of sick leave.
- Employees accrue one hour of sick time for every 30 hours worked.⁵ There is no limit to the number of hours an employee can accrue. Employees can carry over all accrued but unused

¹ https://www.courts.michigan.gov/4a2778/siteassets/case-documents/uploads/opinions/final/sct/165325_115_01.pdf

² <https://www.legislature.mi.gov/documents/mcl/pdf/mcl-Act-337-of-2018.pdf>

³ <https://legislature.mi.gov/documents/2017-2018/initiative/pdf/MITimeToCareFINAL.pdf>

⁴ This replaces the definition of employee under Paid Medical Leave which excluded from the definition of employees: employees that are exempt from the overtime requirements under the Fair Labor Standards Act, employees covered by a collective bargaining agreement, federal employees, and employees working 25 weeks or less in a calendar year.

⁵ Hours worked does not include any vacation time, holidays (paid or unpaid), or any other leave time taken.

sick time; however, an employer is not required to allow the employee to use more than 72 hours each year.

- Employers do not have to pay out accrued and unused sick time upon termination, resignation, retirement, or any other type of separation from employment.

The ESTA also includes anti-retaliation provisions if an employee uses sick leave. Employees will be able to file civil actions against employers for any violations of the ESTA and potentially recover payment for the sick leave, payment of back wages, rehiring or reinstatement in previous role, and attorney’s fees. The ESTA also imposes notice and record-keeping requirements as detailed below in the next steps. Failure to comply with ESTA could result in the Director of Licensing and Regulatory Affairs:

- Imposing civil penalties (amounts vary depending upon the violation and are also at discretion of Director)
- Requiring payment of earned sick time
- Awarding compensatory damages including back wages
- Bringing a civil lawsuit against the employer

Starting February 21, 2025, the Court has ordered a phased-in approach to the Wage Act and the minimum wage requirements plus phasing out the tip credit. The current minimum wage of \$10.33 will increase to an amount above \$12 to account for the inflation adjustment. The tip credit will also be phased out until eliminated starting February 21, 2029. Currently, the tipped employee hourly rate is \$3.93 which is 38% of the minimum wage.

Date	Minimum Wage	Tip Credit Rate
February 21, 2025	\$10.00 plus inflation adjustment	48% of minimum wage
February 21, 2026	\$10.65 plus inflation adjustment	60% of minimum wage
February 21, 2027	\$11.35 plus inflation adjustment	70% of minimum wage
February 21, 2028	\$12.00 plus inflation adjustment	80% of minimum wage

EMPLOYER NEXT STEPS

- Amend eligibility provisions for sick leave based upon the definition of employee.
- Review sick leave policies to ensure that accrual periods are calculated correctly.
- Ensure that sick leave policies allow employees a minimum of 72 hours of sick leave annually.
- Prepare written notices of the sick leave policy and distribute the notice in English, Spanish, and any other language that is spoken by 10% of the employer’s workforce.
- Amend document retention policies to maintain sick leave records for at least three years.
- Update hourly rates when the State’s Treasurer releases the new minimum wage adjusted for inflation.
- Review health plan affordability as an increase in wages may permit an applicable large employer to increase employee contributions for health insurance and still comply with the affordability provisions of the ACA.

RESOURCES

- For Michigan's Earned Sick Time page with FAQs and resource links, visit <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act>.
- When available, required posters will be available at this link: <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/paid-medical-leave-act-required-poster>

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