

# CLIENT ALERTS

## Earned Sick Time Act Amended! The More Manageable Law Takes Immediate Effect for Most, but Employers Have 30 Days to Draft Policies

### Client Alert

2.21.2025

In a late-night session, the Michigan Legislature has amended the Earned Sick Time Act (“Amended ESTA”) eliminating many of the most glaring concerns of employers in implementing the law. The Amended ESTA, which the Governor is expected to sign, requires employers to provide sick time that either accrues at one hour per 30 hours worked or frontloads 72 hours (40 hours for small businesses) for full-time employees and part-time employees’ hours may be pro-rated. If hours are frontloaded, there is no carryover requirement for unused sick time. In addition, employers can require sick time to be used in one-hour increments and also, with caveats, enforce call-in procedures which close a loophole that could have been disastrous in the original law.

The Amended ESTA also eliminated the presumption of retaliation for any adverse personnel action that occurs within 90 days and eliminates a private right of action. Companies with collective bargaining agreements also have some clarity under the amendments.

While the law takes immediate effect, employers do have a 30-day window to post notice and finalize policies to comply with the law. Smaller businesses have until October 1, 2025, before the law impacts them.

Below is a comparison of the original version compared to the new 2025 Amended Act (column on the right):

|                   | Earned Sick Time Act, Original Version         | <b>2025 Amended Act</b> |
|-------------------|--|-------------------------|
| Increments of Use | Payroll increment or 1 hour, whichever is less | <b>1 hour</b>           |

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|  |                                     |   |
|--|-------------------------------------|---|
| Small Employer Definition                                | Less than 10 employees              | <b>10 or fewer</b><br><br><b>Provides delayed compliance date of October 1, 2025</b>  |
| Employees Exempt   | Employees of the Federal Government | <b>1. Employees of the Federal Government</b><br><br><b>2. Independent Contractors</b><br><br><b>3. Unpaid trainees and interns</b><br><br><b>4. Minors</b><br><br><b>5. Seasonal (not expressly excluded but Act does not mandate use within the first 120 days of employment)</b> |
| When Accrual Begins                                      | 2/21/25                             | <b>2/21/25</b>  |
| When Employers Must Give Written Notice & Display Poster | 2/21/25                             | <b>30 days from Amendment</b>   |

|                                     |   |  |
|-------------------------------------|---|--|
| <p>Frontload Allowed</p>            | <p>Silent</p>   | <p><b>Expressly permits</b></p> <p><b>Pro-rating hours for part-time is allowed</b></p> <p><b>Benefits of frontloading include:</b></p> <ol style="list-style-type: none"> <li><b>1. No carryover required;</b></li> <li><b>2. Not required to calculate and track accrual; and</b></li> <li><b>3. Not required to pay employee the earned sick time at end of the year</b></li> </ol> |
| <p>Carryover/Usage Requirements</p> | <p>All unused earned sick time carries over from year to year; however, an employer is not required to permit an employee to use more than the annual allowed maximum time (paid or unpaid) in a 12-month period.</p> | <p><b>If frontloaded, no carryover requirement</b></p> <p><b>If accrued, up to 72 hours</b></p> <p><b>(40 hours for small businesses)</b></p>  |
| <p>Definition of Family Member</p>  | <p>Included any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.</p>   | <p><b>Removes “or affinity whose close association with the employee is the equivalent of a family relationship”</b></p>   |

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| Remedies   | Filing Administrative Complaint<br><br>or<br><br>Private Right of Action               | <b>Administrative Claims<br/>(civil fine of 8 times the<br/>employee's hourly<br/>wage if Act is violated)</b><br><br><b>Eliminates Private<br/>Right of Action</b><br><br><b>Eliminates rebuttable<br/>presumption against<br/>the employer</b> |
| Claim Period   | Not later than 3 years after<br>alleged violation                                      | <b>Not later than 3 years<br/>after alleged violation</b>  |
| Wage Rate  | LEO interpreted this to be<br>regular rate of pay (Act stated<br>"normal hourly wage") | <b>Base wage</b><br><br><b>Does not include<br/>overtime, bonuses,<br/>tips, commissions</b>   |
| Payment of<br>Unused Accrued<br>Time at<br>Termination | Not Required   | <b>Not Required</b>  |
| Requirement to<br>create separate<br>bank of time      | None   | <b>None</b>  |
| Notification<br>Requirements                           | Foreseeable – 7 days<br><br>Unforeseeable – as soon as<br>practicable                  | <b>Foreseeable – 7 days</b><br><br><b>Unforeseeable – as<br/>soon as practicable <u>OR</u><br/>in accordance with the<br/>employer's written<br/>policy</b>  |

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|                                  |   |   |
|----------------------------------|---|---|
| Documentation Requirements       | Provide documentation within a reasonable time                                    | <b>Provide requested documentation within 15 days</b>   |
| Notice and Posting Requirements  | 2/21/25   | <b>30 days from Amendment</b>   |
| Waiting Period for New Employees | 90 days after commencing employment to use accrued earned sick time               | <b>120 days after commencing employment to use accrued earned sick time</b>                         |
| Collective Bargaining Agreement  | LEO interpreted this to not impact existing CBAs <i>if</i> it addresses sick time | <b>Does not impact existing CBAs (for a maximum of 3 years); exemption for multi-employer plans</b> |

Overall, the Amended ESTA provides relief for employers struggling with figuring out how to comply with the original law. However, this remains an extremely complex law that will require careful policy drafting. Butzel's labor and employment attorneys stand ready to advise on this matter.

**Brett Miller**

313.225.5316

[millerbr@butzel.com](mailto:millerbr@butzel.com)

**Rebecca S. Davies**

313.225.7028

[davies@butzel.com](mailto:davies@butzel.com)