Michigan Passes Paid Sick Leave

OVERVIEW

On Sept. 5, 2018, the Michigan legislature adopted the paid sick leave ballot proposal—the Earned Sick Time Act (Act). The Act requires employers to provide employees with one hour of paid sick leave for every 30 hours worked. By passing the Act, the legislature prevented paid sick leave from being included on the ballot in the November 2018 general election.

It is widely expected that the Michigan legislature will amend the Act before it takes effect in the spring of 2019. Michigan lawmakers can amend the Act with a simple majority vote, instead of the three-fourths majority vote that is required to amend a voter-approved ballot initiative.

This Compliance Overview summarizes Michigan’s paid sick leave requirements, as enacted.

ACTION STEPS

Because it is expected that the Act will be amended before it becomes effective, employers should monitor developments related to the paid sick leave law. Also, as the Act’s effective date approaches, employers should become familiar with the paid sick leave law and update their paid leave and attendance policies for its requirements.
Covered Employers
All employers that employ one or more employees in Michigan must comply with the Act’s requirements. There is no exception for small employers.

Covered Employees
Virtually all employees are entitled to accrue and use paid sick leave. Employees begin to accrue paid sick leave upon the Act’s effective date or upon hire, whichever date is later. While there is no length of service or hours of service requirement in order to be eligible for paid sick leave, employers may require employees hired after April 1, 2019, to wait 90 calendar days before using accrued paid sick leave.

Accrual of Paid Sick Leave
All employees must accrue a minimum of one hour of paid sick leave for every 30 hours worked. Exempt employees are assumed to work 40 hours per week, unless the employee’s normal workweek is less than 40 hours, in which case the exempt employee’s sick leave accrues based on the employee’s normal workweek.

Use of Paid Sick Leave
Employers may limit employees’ use of paid sick leave to 72 hours per year. For paid sick leave purposes, a “year” is any regular and consecutive 12-month period as determined by the employer.

Small businesses may limit employees’ use of paid sick leave to 40 hours per year. However, if an employee of a small employer exhausts his or her paid sick leave, the small employer must permit the employee to use up to 32 hours of unpaid leave that year, unless the employer provides a higher limit.

To determine whether an employer is a small business, all individuals who work for compensation, including full-time, part-time and temporary employees, must be counted. Temporary employees obtained through a staffing agency or similar entity must also be included when counting employees. An employer is not a small business if it maintained 10 or more employees on payroll during 20 or more calendar workweeks in the current or preceding calendar year.

Employers must permit employees to use accrued sick leave due to any of the following reasons:

1. An employee’s own mental or physical illness, injury or health condition, including the need for medical diagnosis, care or treatment, and preventive medical care

2. A family member’s mental or physical illness, injury or health condition, including the family member’s need for medical diagnosis, care or treatment, and preventive care

The new paid sick leave law will require all Michigan employers to provide paid sick leave to their employees. Small businesses must allow employees to use up to 40 hours of paid leave each year, while large employers must allow employees to use up to 72 hours of paid leave each year.
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<th>Closure of the employee’s place of business by order of a public official due to a public health emergency or closure of an employee’s child’s school or place of care by order of a public official due to a public health emergency, or when it has been determined by health authorities that the employee’s or the employee’s family member’s presence in the community would jeopardize the health of others due to a communicable disease</th>
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</table>
|   | 4 | If an employee or an employee’s family member is a victim of domestic violence or sexual assault, to obtain medical care, psychological or other counseling for physical or psychological injury or disability, or to:  
  ✓ Obtain services from a victim services organization  
  ✓ Relocate due to domestic violence or sexual assault  
  ✓ Obtain legal services or participate in any civil or criminal proceeding related to or resulting from the domestic violence or sexual assault |
|   | 5 | For meetings at a 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 |

Employers may not require an employee to search for a replacement worker in order to use accrued paid sick leave. Sick leave may be used in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.

**Family Member**

For purposes of paid sick leave use, an employee’s “family member” includes the following individuals:

✓ A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner or a child to whom the employee stands *in loco parentis*;

✓ A biological parent, foster parent, stepparent, adoptive parent or a legal guardian of an employee, or an employee’s spouse, domestic partner or a person who stood *in loco parentis* when the child was a minor;

✓ A person to whom the employee is legally married under the laws of any state or a domestic partner;

✓ A grandparent or grandchild;

✓ A biological, foster or adopted sibling; and

✓ Any other individual related by blood or affinity whose close association with the employee is equivalent of a family relationship.

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Employee Notice and Documentation Requirements
When an employee’s need to use paid sick leave is foreseeable, employers may require advance notice of up to seven days prior to the date paid sick leave is intended to start. When the employee’s need for sick leave is not foreseeable, employees must provide the employer with notice as soon as is practicable.

For paid sick leave absences exceeding three consecutive days, an employer may require reasonable documentation to verify that use of paid sick leave was for a permitted reason. Documentation must be provided to the employer in a timely manner. However, an employer may not delay the employee’s paid sick leave use due to not having received the requested documentation.

If an employer requests documentation for the use of paid sick leave, the employer must pay for all costs associated with the employee obtaining such documentation. If the employee has health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer. All documentation received must remain confidential, and the employer may not ask for details regarding the nature of the illness or violence.

Payment of Paid Sick Leave
Employees must be paid at a pay rate equal to the employee’s normal hourly wage or, if greater, the minimum wage when the employee uses paid sick leave. For employees who may earn varying hourly wage rates depending on the work performed, the “normal hourly wage” means the average hourly wage of the employee in the pay period immediately prior to the pay period that the employee uses paid sick leave.

Carry-over, Termination and Rehire Rules

<table>
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<tr>
<th>Carry-over</th>
<th>Employees must be permitted to carry over unused, accrued paid sick time from year to year, with no limit.</th>
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<tbody>
<tr>
<td>Termination</td>
<td>Employers are not required to pay out an employee’s accrued, but unused paid sick leave upon termination, resignation, retirement or other separation of employment.</td>
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<tr>
<td>Rehire</td>
<td>An employee who is rehired within six months by the same employer is entitled to have his or her paid sick leave reinstated. In addition, the employee must be permitted to use his or her reinstated paid sick leave upon rehire.</td>
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Employee Protections

Under the Act, an employer is prohibited from:

- Denying an employee his or her rights to paid sick leave
- Threatening to discharge, suspend, demote, reduce hours or enforce any other adverse employment action against an employee who exercises his or her rights under the law
- Interfering with (or punishment for) an employee’s participation in any manner in an investigation, hearing or proceeding under the Act
- Counting paid sick leave absences against an employee that could lead to discipline under the employer’s attendance policy

Employer Notification and Recordkeeping Requirements

Upon hire or by April 1, 2019, whichever is later, employers must provide each employee with written notice that informs the employee of:

- The amount of paid sick leave that is required to be provided under the Act;
- The employer’s choice of how it will calculate the “year” for paid sick leave purposes;
- The terms under which paid sick leave may be used;
- The retaliatory actions that employers are prohibited from taking under the Act against employees who exercise their rights; and
- Employees’ rights to bring a civil action or file a complaint with the Department of Licensing and Regulatory Affairs (Department) for any violation of the Act.

Employers will also be required to conspicuously display a poster in the workplace that contains the same information as outlined above. The Department will create model notices and posters for employers to comply with these notification requirements. Employers must provide the notice and display the poster in English, Spanish and any other language that is the first language spoken by at least 10 percent of the employer’s workforce, so long as the Department has translated the poster and/or written notice into that language.

Employers must retain records of the hours worked and sick leave taken by employees for a period of three years.

Employer Paid Leave Policies

Employers will comply with the paid sick leave law if they provide employees with paid leave in at least the same amounts as provided under the Act that may be used for the same purposes, and under the same
conditions as required under the law. In addition, paid leave must accrue at a rate equal to or greater than the accrual rate for paid sick leave under the Act (one hour for every 30 hours worked). In addition, a small employer’s paid leave policy must permit employees to use accrued paid sick leave before using unpaid sick leave. For these purposes, an employer-provided “paid leave” includes (but is not limited to) paid vacation, personal days and paid time.