Frequently Asked Questions: Michigan's Earned Sick Time Act

NOTE: This FAQ was prepared by the Michigan Chamber to help members comply with Michigan's Earned Sick Time Act (ESTA). It is intended to convey general information only; it should not be relied on as legal advice or opinion. It may change as we get further information.

The full text of the Act can be viewed here. The MI Department of Labor & Economic Opportunity's (LEO) FAQ can be found HERE. Last updated: Nov. 25, 2024

Q. How did this happen?

A. The Michigan Supreme Court ruled on July, 31 2024, that two 2018 ballot initiatives to increase the state's minimum wage and mandate paid sick leave requirements for employers should be put into effect — despite never being voted on by the people — saying the strategy the Michigan Legislature used to adopt alternative legislation violated the Michigan Constitution. The Court ordered the ballot language on both issues to take effect on Feb. 21, 2025.

Q. When must I be in compliance?

A. All employers must be compliant with the law on Feb. 21, 2025. At this time, it remains unclear how this would impact a company whose benefit year begins on January 1st.

Q. Does my business need to comply with the new law?

A. The Act applies to all employers, regardless of size. "Employer" is defined as "any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs one or more individuals, except that employer does not include the United States government."

There is one caveat. LEO says this in their FAQ (link above): "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."

Q. For what purposes may an employee use sick time?

A. The ESTA goes beyond what many employers include under their sick leave policies today. While we encourage you to review the language in the ESTA (link above), it allows employees sick leave for any of the following: (1) Physical or mental illness, injury or health condition of the employee or his or her family member; (2) Medical diagnosis, care or treatment of the employee or employee's family member; (3) Preventative care of the employee or his or her family member; (4) Closure of the employee's primary workplace by order of a public official due to a public health emergency; (5) The care of his or her child whose school or place of care has been closed by order of a public official due to a public health emergency; (6) The employee's or his or her family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider; (7) Meetings at a child's school or place of care related to the child's health or disability.

Q. Are all my employees eligible to accrue and use paid sick leave?

A. The Act broadly defines "employee" as "an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government." This means all employees – full-time, part-time and seasonal – are entitled to accrue and use 72 hours of paid leave per calendar year. (See next question about requirements for small businesses.)

Although LEO says the following about the definition of "employee" in their FAQ, we would advise checking with legal counsel before excluding temporary employees, independent contractors, subcontractors, etc. The stakes are too high to exclude certain workers from coverage without checking with an attorney.

From LEO: "Michigan case law uses the economic reality test to determine whether an individual is an employee. 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. The ESTA applies to work performed by employees who are physically located in Michigan, regardless of the employer location."

Q. Is there a small business exemption?

A. No, although for businesses with fewer than 10 employees working for compensation during a given week, employees shall "accrue one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of [paid] earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees…must be entitled to use paid…time before using unpaid…time." In terms of determining who is/isn't a small business, the ESTA says this: "In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year."

LEO says this: "All employees of the employer within the United States or its territories are included for purposes of the total number of employees. An employer is considered a 'small business' if it employs nine or fewer employees and employed 10 or more employees in 19 or fewer workweeks in the current or previous calendar year. The workweeks with 10 or more employees need not be consecutive. This includes full-time, part-time, and temporary employees including those provided through a temporary service or staffing agency or similar entity. Once an employer employs 10 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: Consider a new employer that employs nine individuals from January 2025 through March 2025, then employs 10 individuals for any 20 weeks from April 2025 through Sept. 2025, but then employs only 9 employees again starting in Oct. 2025 and continuing indefinitely. This employer was a "small business" from Jan. 2025 until it reached the 20-workweek threshold. Once they reached the 20 or more workweeks with 10 or more employees' threshold, this business will not be a 'small business' for the remainder of 2025 and all of 2026. Starting in Jan. 2027, however, this employer can again be considered a 'small business.'"

The FAQs clarify that when determining whether an employer exceeds the ten employee threshold, employers must count all employees in the United States. For example, if an employer has five employees in Michigan, but 10 employees elsewhere in the US, that employer is a large employer for ESTA purposes. Meaning, those five Michigan employees are entitled to 72 hours of paid ESTA time rather than 40 hours of paid ESTA time and 32 hours of unpaid ESTA time.

Q. How must time be accrued?

A. Employees of most businesses (other than small businesses – see previous question) "shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit." Unlike the Paid Medical Leave Act, which the Supreme Court invalidated, the ESTA does NOT specify that an employer may cap accrual to one hour of leave in a calendar week (although see question below regarding individuals exempt from overtime).

LEO says this: "Small business employers: Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but, shall not be entitled to use more than 40 hours of paid earned sick time in a calendar year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business must be entitled to use paid earned sick time before using unpaid earned sick time.

"All other employers: All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.

"Salaried employees: For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek."

Q. How is a "year" (benefit year) defined for purposes of accrual of time?

A. Employers have the flexibility to determine the definition of a year, as the law says a "year shall mean a regular and consecutive twelve-month period, as determined by an employer." This allows employers to determine whether an employee can accrue/use paid sick leave based on an anniversary date, a fiscal year, a calendar year or any other system the employer chooses.

Q. How are individuals exempt from federal overtime laws treated?

A. An employee who is exempt from overtime under the FLSA is "assumed to work 40 hours in each workweek, unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek."

Q. How does time accrue for eligible part-time employees? If an employee works 32 hours in one week, do we need to apply three hours from the next week before he or she accrues one hour?

A. Except for employees exempt from federal overtime requirements (see question above), time accrues the same for all employees (one hour for every 30 hours worked), regardless of whether an employee works a 25-hour week, a 40-hour per week or a 50-hour week.

Q. Does time accrue when an employee is on vacation or on a holiday?

A. For ease of compliance, you may choose to allow time to accrue when an employee is on vacation/other leave, but the ESTA does not seem to require it. The Act says an eligible employee must accrue paid medical leave at a rate of at least one hour of leave for every 30 hours worked, up to 72 hours per benefit year. In other words, if they aren't working because of vacation or a holiday, they don't need to accrue the time.

Q. Do I have to offer more than 72 hours of leave per year? Does time carry over year-to-year?

A. An employer is *not required* to allow the employee to accrue more than 72 hours per benefit year (12-month period) but may choose to offer a more generous benefit (whether it be more sick time, vacation time or a mix). The ESTA requires time to "carry over from year to year, but a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year." This means employers must carry forward all time on paper – but, in practice, can limit the use time. Further, the ESTA specifies "[t]his act does not require an employer to provide financial or other

reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment."

LEO says: "Employees do not need to be paid for unused accrued earned sick time at separation under the ESTA. However, Public Act 390 of 1978, the Payment of Wages and Fringe Benefit Act, may require payment upon termination pursuant to the employer's written policy or contract."

Q. When does an employee's time start to accrue?

A. On the effective date of the Act or upon commencement of the employee's employment, whichever is later. ESTA does allow employers to have a policy requiring new employees wait until the 90th calendar date after commencing employment to begin using their time (must begin accruing upon hire).

Q. When is earned sick time available for use by an eligible employee?

A. LEO says: "An employer may require a new employee to wait until the 90th calendar day after commencing employment before using accrued earned sick time. Employees reemployed within the 6-month period are considered to have continued employment for purposes of ESTA and the 90-calendar-daywaiting period."

Q. What is my payroll system only shows accrued hours as being available at the end of the pay period (not as earned sick time is actually accrued)?

A. LEO says: "[A]n employee may use earned sick time as it is accrued regardless of the pay period. Once 30 hours have been worked, an employee is entitled to use one hour of earned sick time for use under ESTA. Employees may use ESTA for paid work hours."

Q. Most of our employees have already accrued 40 hours in this calendar/benefit year. Are we in compliance for year one?

A. We currently do not have a good answer to this question and are seeking guidance from LEO. The ESTA requires time to "accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later."

Q. Can I give an employee his or her time at the beginning of the calendar or benefit year?

A. ESTA is silent on the question of frontloading (i.e., ESTA says employees "shall accrue a minimum of one hour of earned sick time for every 30 hours worked"). However, LEO says: "Employers limiting the use of earned sick time to 72 hours or more may provide the total amount of allowed hours at the beginning of the 12-month period (often referred to as "frontloading"). Because there is no limit on the amount an employee can accrue and carryover, employers should evaluate employee's accruals at least annually to ensure that accrued hours are balanced to hours worked and carryover any balance."

There has been conflicting opinions on the issue of frontloading. This is likely due to the provision creating a private right of action – meaning an individual can go right to court with a complaint. While the LEO FAQ will prove helpful for administrative actions, it will be the court who's interpreting the statute (not LEO) if a complainant goes to court. Employers wishing to proceed with frontloading should check with legal counsel. We will continue to work on legislative changes to cleanup and clarify the language.

Prior LEO guidance indicated that employers could frontload sick time under the Act. However, the newest FAQs clarified that even when frontloading ESTA time, employers should evaluate employee accruals at least annually to ensure that accrued hours are balanced to hours worked. Employers must allow employees to carryover all accrued but unused sick time from year to year regardless of front loading. Notably, if an employee separates from the company an employer may recoup the leave the employee has used that exceeds the amount they earned. Thus, an employer must determine the amount of earned sick time accrued as of the date of separation before recouping the value.

Q. If an employer "frontloads" sick leave, can an employer recoup leave more than what would have been accrued as of the date of separation?

A. LEO says: "Yes. An employer may determine the amount that would have been accrued as of the date of separation and recoup the value of leave used more than the employee's adjusted leave balance, provided that this deduction does not reduce the final paycheck to less than minimum wage and the employer obtained a prior written, voluntary agreement for the deduction."

Q. May an employer pay out unused sick leave annually in lieu of carrying over unused hours to the next year, or at termination without providing the hours at reemployment?

A. LEO says: "No. The ESTA does not authorize an employer to pay out unused sick leave. Therefore, all accrued and unused sick leave would be carried over annually, and any balance upon separation would be reinstated if reemployment is within six months."

Q. Is it true the Act allows time to be used in one-hour increments – or less?

A. It depends on how you track time for payroll or absences. The ESTA says time "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."

LEO's FAQ says: "Does earned sick time have to be taken in 1-hour increments? Possibly. The Act provides that earned sick time may be used in the smaller of (i) one-hour increments, or (ii) the smallest increment of time used by the employer's payroll system for absences of use of other time. For example, if an employer uses 1/10th of an hour (six minutes) for tracking attendance/absences, then this would be the incremental use allowed for earned sick time. If an employer uses 1/2 (30 minutes) of an hour for tracking attendance/absences, then this would be the incremental use allowed for earned sick time."

Q. Can I offer one bank of paid time off (PTO) or do I have to split out sick time from vacation time and other PTO banks?

A. This is going to be tricky for employers to navigate, as there are legal downsides to keeping time in one PTO bank. While the ESTA provides the employer is in compliance "if the employer provides any paid leave, that may be used for the same purposes and under the same conditions provided in this act and that is accrued in total at a rate equal to or greater than the rate described…", the "under the same conditions" language is problematic. Employers are advised to carefully study what might need to change with their existing paid time off (PTO) policies if wishing to proceed with combining ESTA leave with paid time off (PTO) or other banks of leave time. It would seem the ESTA limits the types of restrictions employers can put on all leave time when choosing this option (e.g., would prohibit employers from requiring advance notice, mandating that vacation/personal time be used in half day/full day requirements, etc.).

The LEO FAQ does not provide any further guidance beyond the statutory language, saying: "An employer's paid time policy may be used so long as it provides at least the same benefits as provided in the ESTA, and may be used for the same purposes, under the same conditions, and accrued at a rate equal to or greater than the rate described in the ESTA. For small business employers, employees must be allowed to use paid earned sick time before using unpaid sick time."

Q. Who is considered a "family member" under the ESTA?

A. "Family member," as defined under the Act, includes "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 legal guardian of an employee; a spouse; or a person who stood in loco parentis when the employee was a minor child. Family members also include grandparents; grandchildren; biological, foster, and adopted siblings; any person to whom the employee is legally married under the laws of any state; and "any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship."

*Domestic partner means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. Committed relationship means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.

Q. How is the pay rate calculated?

A. The ESTA requires an employer to pay an employee at a pay rate equal to the "greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act…but not less than the minimum wage rate established by section 4 of the workforce opportunity wage act. For any employee whose hourly wage varies 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 in which the employee used paid earned sick time."

Note: LEO FAQs use the term "regular rate of pay" when discussing the rate of sick time pay. It is unclear how LEO is defining regular rate of pay and how that term is different than the language in the statute. However, LEO does say: "Fringe benefits are not included in the calculation of the regular rate of pay."

Q. Can I require an employee to provide advance notice for absences?

A. The ESTA specifies: "If the employee's need to use earned sick time is foreseeable, an employer may require advance notice, not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time. If the employee's need for the earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable." An employer may not require an employee to search for or secure a replacement worker.

LEO says: "Deciding what is practicable is dependent on the unique facts and circumstances of each situation, and the parties should approach this requirement with reasonable minds. Notification as soon as practical for unforeseeable leave is also included in the Family Medical and Leave Act (FMLA). For consistency, the consideration under ESTA would be similar."

Q. Can I discipline for absences? What recourse does an employer have for employees failing to follow established notice and documentation policies?

A. The ESTA says: "An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action." In practice, this language will require employers to dispose of their existing notice, procedural and documentation requirements for requesting sick time. In fact, many believe this language is ripe for abuse and will provide employees with up to 72 hours of no-notice, intermittent leave time each calendar year. Employers' hands will be tied (i.e., no discipline allowed; see language above in addition to the FAQ titled "Can I be sued for noncompliance with the ESTA?") as it relates to situations where an employee is a "no call, no show" for up to three days.

LEO's FAQ says this: "What recourse does an employer have for an employee failing to follow established notice and documentation policies? Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements. Employers may not retaliate against an employee for engaging in activity protected by the act. Importantly, there is a rebuttable presumption that an employer violated the act if it takes any adverse personnel action against an employee within 90 days after the employee engages in protected activity."

Q. Can I require a doctor's note for absences?

A. Yes, although employers are limited in terms of what they can require and when. The ESTA says: "For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that…time…has been used for a purpose [described in the act]. Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health

care professional indicating that earned sick time is necessary is reasonable documentation…" It also says: "An employer shall not require that the documentation explain the nature of the illness or the details of the [domestic] violence."

Q. Is it true that employers are responsible for paying the costs of receiving documentation from a doctor?

A. "If an employer chooses to require documentation…the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does not have 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." The term "all out-of-pocket expenses" is undefined and will be subject to interpretation by LEO and/or courts.

Q. May an employer ask questions regarding the need for using earned sick leave?

A. LEO says: "When using leave under ESTA, employees should provide sufficient information for the employer to determine whether the leave meets the eligible uses under the ESTA. If an employer is unsure, they may ask additional questions about the nature of the leave to determine if the leave meets the eligible uses."

Q. How does ESTA interact with FMLA?

A. LEO says: "Like other leave benefits, the ESTA may run concurrently with FMLA approved leave provided that the leave meets the requirements of FMLA. However, if ESTA leave is being used, requirements on advance notice, unforeseeable leave, documentation requirements, will be applied under the ESTA provisions. Once ESTA leave is exhausted or not being used for a FMLA covered leave, the FMLA provisions apply."

Q. Do I have record keeping requirements?

A. Yes. Under the ESTA employers "shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees" and give the State access to those records "with appropriate notice and at a mutually agreeable time." If a question arises as to whether the employer has violated the ESTA and the employer does not maintain or retain "adequate records," there is a "presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence."

LEO says: "Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements. Employers may not retaliate against an employee for engaging in activity protected by the act. Importantly, there is a rebuttable presumption that an employer violated the act if it takes any adverse personnel action against an employee within 90 days after the employee engages in protected activity."

Q. Does the law create new rights for employees?

A. Yes, the ESTA says: "An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the act." It also says: "An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Right protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act." Finally, the ESTA specifies: "An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action."

LEO says: "A claim may be filed with the Wage and Hour Division within 3 years of the alleged violation date. An investigation will be completed, and mediation attempted, if appropriate. If a violation is found, the Department may award all appropriate relief including but not limited to payment of all earned sick time improperly withheld, all damages incurred by the complainant as a result of violation of this act, back pay, and reinstatement in the case of job loss. In addition to the civil remedies afforded to affected employees, an employer who fails to provide earned sick time is subject to a $1,000 administrative fine. An employer who willingly violates the posting requirement is subject to a $100 administrative fine for each separate violation."

Q. Can I be sued for noncompliance with the ESTA?

A. Yes. In fact, the ESTA creates a "rebuttable presumption" – specifying that it's presumed that an employer has taken an "adverse personnel decision" if it takes an adverse action against an employee who has filed a complaint, opposed an employer's policy or practice or informed another person of his/her rights.

In addition to its administrative process through the state in addition to the provisions allowing for a private right of action (PRA). Remedies available to employees include reinstatement, attorney fees and all back pay and benefits (doubled as liquidated damages). The PRA language creates massive liability exposure and the opportunity for abusive lawsuits class action litigation.

Q. Do I need new labor law posters?

A. Yes, like the minimum wage law, employers must display conspicuously at their places of business a poster that contains compliance information. Some employers may need to post in Spanish, in addition to English. Order new posters today: https://www.michamber.com/publicationsstore/.

LEO says: "[E]mployers must provide written notice of an employee's rights under the ESTA at the time of hiring or on Feb. 21, 2025, whichever is later. Employers are also required to display a poster at the place of business containing specific rights listed in the ESTA."

Q. What information do I need to communicate with employees?

A. You must provide written notice to each employee at the time of hiring or a specific date (TBD) by the State including: (1) the amount of earned sick time required to be provided under the act; (2) the employer's choice on how to calculate a "year"; (3) the terms under which earned sick time may be used; (4) that retaliatory personnel action by the employer against an employee for requesting or using earned sick time is prohibited; and (5) the right of employees to bring a civil action or file a complaint with the State for any violation of the act.

Q. What if an employee is rehired or is transferred; must his/her time accrued be reinstated?

A. Yes, the ESTA specifies "[i]f an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employer shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided…If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement." LEO says "[e]mployees separated from employment with the same employer for more than six months lose all accrued, unused earned sick time, unless the employer's policy allows these hours to be maintained.

Q. What about collective bargaining agreements? Do we have to renegotiate them?

A. The ESTA says: "If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement."

LEO says this: "The ESTA has two sections that reference collective bargaining agreements: (1) This act provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to employees. (2) This act does not do any of the following: (a) Prohibit an employer from providing more earned sick time than is required under this act. (b) Diminish any rights provided to any employee under a collective bargaining agreement. (c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act. (d) Prohibit an employer from establishing a policy that permits an employee to donate unused accrued earned sick time to another employee. Sec. 12: If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement,

notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.

"Applying these sections depends on the specific terms and conditions of the collective bargaining agreement, and these two sections preclude interference with current agreements when the parties have negotiated sick leave benefits. Thus, the Wage and Hour Department has identified two scenarios that determine whether the ESTA applies to employees beginning on Feb. 21, 2025: (1) 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. (2) 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."

Have additional questions?

Please contact Wendy Block – wblock@michamber.com or submit your question to the Bodman law firm through MI Chamber's Employment Law Hotline (free to members!) – aat2@bodmanlaw.com.