

Q: May we mandate the increments of time taken at one time - i.e. 4-hour increment minimum?

A: ESTA contains some built-in flexibility concerning the increments of use, but a mandatory minimum 4-hour increment would not comply with the law. ESTA 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. Consequently, the largest permissible increment of time for ESTA-covered reasons would be one hour. However, if your payroll system uses a smaller increment for tracking absences or use of other time, ESTA mandates that employees be permitted to use that increment for earned sick time, as well.

Q: If we choose to have new employees wait 90 days before they are eligible to use earned sick time, how is that determined—calendar days or workdays?

A: ESTA permits employers to require that new employees wait until the 90th calendar day after commencing employment before they are eligible to use earned sick time.

Q: We already provide full-time employees 96 hours of sick time per year. Does the ESTA have to be a separate bucket of time off?

A: No, ESTA does not have to be a separate bucket of time off. Employers can comply with ESTA by providing a single allotment of PTO, provided the time is available for employees to use for the same reasons covered by ESTA and all other requirements of the law are met.

Q: We are a small business (8 employees). Do we need to track/carry-over unused UNPAID sick time? We will be limiting total ESTA usage to 72 hours per year.

A: Yes, although only a portion of the 72 hours will be paid, ESTA will require that even unpaid accrued sick time carries over to the next benefit year.

Q: Does ESTA allow employers to frontload earned sick time?

A: Yes, employers may frontload earned sick time, but they must also ensure that the amount of leave employees receive meets or exceeds the minimum accrual levels set by the law.

Q: Can an employee put in a request for mental health day and use ESTA?

A: Yes, assuming the employee has enough time accrued, they use ESTA time for a mental illness, injury, health condition, diagnosis, care, or treatment, among other reasons.

Q: If an employee has a balance of earned sick time remaining at the end of the year, can we pay it out to the employee instead of carrying it over to the next year?

A: No, leave that is accrued but unused at the end of the year must carry over.

Q: We already offer 80 hours or more for full-time employees. These hours have not been able to be rolled over (use it or lose it). Are you saying that any employee can now roll over any remaining hours (even if those are greater than the 72 hours)?

A: Yes, ESTA mandates that time that has been accrued but not used must carry over to the next year. However, even if the carryover results in an employee accumulating more than 72 hours of sick time, the employer can still limit the amount of time the employee uses to fall within the ESTA standards. For example, if an employee accumulated 150 hours of sick leave, the employer could still limit their use of paid sick time to 72 hours in a single year.

Q: Do we have to provide our part-time employees 80 hrs of EST, our full-time employees only get 72 hrs of sick time frontloaded on Jan 1, but our sick time does rollover.

A: No, ESTA does not require you to provide your part-time employees with 80 hours of sick time. Rather, the law mandates that employees—including part-time employees—accrue sick time at a rate of at least 1 hour for every 30 hours worked.

Q: Can employers cap accrual at 72 hours per year?

A: No, employers may cap use, but not accrual. Earned sick time must accrue at a rate of at least one hour of leave for every 30 hours worked.

Q: If we open up a collectively bargained contract for negotiating a single issue/item only (wages for example), would we need to start following ESTA at that time? Or at the original expiration of the contract?

A: Assuming the CBA addresses earned sick time (or PTO that can be used for the purposes set forth in ESTA), ESTA will apply beginning on the stated expiration date of the existing CBA.

Q: How are employees notified of ESTA?

A: ESTA requires employers to display a poster, which should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce. The poster must be displayed in a conspicuous place that is accessible to employees. Copies of an ESTA-compliant poster may be downloaded from the Michigan Department of Labor & Economic Opportunity's website.

Q: Does ESTA impose a 90-day waiting period before employees are entitled to use earned sick time?

A: No. ESTA permits employers to require new employees to wait 90 days before using the earned sick time they accrue, but existing employees will be permitted to use earned sick time as it is accrued.

Q: What is the max number of hours you can accrue as a roll over?

A: There is no maximum number of hours that an employee may accrue or roll over, but the employer may cap annual use of earned sick time at 72 hours or any greater amount they may choose.

Q: Does ESTA require employers to payout unused sick time upon an employee’s separation?

A: No, ESTA does not require payouts of unused sick time. Under ESTA, employers will continue to follow their policies regarding any such payouts.

Q: Under ESTA, will we need to start having salaried/exempt employees submit timesheets?

A: Under ESTA, most exempt employees—including those covered by the executive, administrative, and professional exemptions—are assumed to work 40 hours in each workweek, unless their normal work week is less than 40 hours. Consequently, for a full-time employee covered by the “professional” exemption, for example, there would be no need to require submission of time sheets because the employee would be assumed to work 40 hours each week, for purposes of ESTA accrual.

Q: Can an employee use earned sick time while on a leave covered by the FMLA?

A: Yes, assuming the purpose of the FMLA leave is among the qualifying reasons for using earned sick time, the employee may use the two forms of leave concurrently.

Q: For purposes of accruing earned sick time, do overtime hours count?

A: Yes, employees must accrue at least one hour of earned sick time for every 30 hours worked, including overtime hours. For this reason, employers who frontload earned sick time or PTO should ensure that the amount of leave they provide meets or exceeds the minimum accrual levels.

Q: What happens when employees don’t call in and don’t show up to work? Are they still permitted to use sick time?

A: If the need to use sick time is foreseeable, employers may require advance notice, not to exceed 7 days prior to the first date of the employee’s absence. If the need is not foreseeable, the employer may require the employee to provide notice “as soon as practicable.” If an employee’s use of earned sick time extends to “more than 3 consecutive days,” the employer may require reasonable documentation that the time off has been used for one of the reasons covered by ESTA.

Q: What is the rate of pay at which ESTA time must be paid?

A: ESTA requires employers to pay employees using earned sick time at the rate equal to the greater of the employee’s normal hourly wage or the minimum wage in Michigan. If the employee’s 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 uses earned sick time.

Q: May employers require employees to secure a replacement worker before they are allowed to use earned sick time?

A: No, ESTA prohibits employers from requiring employees to secure a replacement.

Q: What are ESTA’s record keeping requirements?

A: ESTA requires employers to retain records for at least 3 years documenting the

hours worked and earned sick time taken by employees. Under some circumstances, employers who do not maintain adequate records may be presumed to have violated the Act.

Q: Do seasonal workers accrue earned sick time under ESTA?

A: Yes, all employees, including seasonal employees, accrue earned sick time. Additionally, if an employee has accrued sick time on the date their employment ends and then resumes employment within 6 months, ESTA requires the employer to restore the employee's previous balance of accrued sick time.

Q: What about salaried employees with unlimited PTO? If our payroll system uses full day increments for them, do we need to track all time off by the hour now?

A: ESTA provides that employees may use earned sick time 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.

Q: Can an employee use earned sick time on a day they are not scheduled to work?

A: ESTA defines "earned sick time" as "time off *from work* that is provided by an employer to an employee," so any day when an employee is not scheduled to work would likely not be one for which the employee could use earned sick time.

Q: Does the Earned Sick Time Act mean that elected officials are eligible to earn paid sick time? What about volunteers?

A: No. The ESTA applies to *employees*, not elected officials, volunteers, independent contractors and others who are not employed by an employer covered by the Act.

Q: Can an employer have one plan (for example, a paid time off policy) where employees accrue paid time off in the amounts required by the ESTA, or do employers need to establish a separate bank for paid sick time?

A: Yes, an employer can have one plan, such as a PTO policy, as long as the plan provides at least the same amounts of time provided in the ESTA and the employer allows employees to use the time for the same purposes and under the same conditions provided by the Act.

Q: Currently, our employees can use paid sick time in 4- or 8-hour increments. Is this allowed under the ESTA?

A: No. The ESTA specifies that earned sick time may be used in the *smaller* of hourly increments or the smallest increment of time used by the employer's payroll system for absences or use of other time. If, for example, your payroll system for absences tracks time in tenths of an hour (6 minutes), then employees would be permitted to use that same increment for use of earned sick time. However, if your payroll system accounts for absences or use of other time in 4-hour increments, for example, then you could require employees to use ESTA-covered time in hourly increments and likely maintain compliance. Employers with compliance questions should consult with legal counsel.

Q: Our company often uses independent contractors who come to us through an agency. Do we need to provide them paid sick time under the ESTA?

A: No, if they are correctly classified as *independent contractors*, your company will not be required to provide them paid sick time because the ESTA applies to *employees*.

Q: When does ESTA go into effect and can we choose to implement sooner?

A: The ESTA takes effect on February 21, 2025, and yes, employers can implement changes sooner if they wish. However, some employers are electing to wait until the effective date to see whether any legislative changes are made before ESTA becomes effective.

Q: When must employees start accruing earned sick time at the levels required by the ESTA?

A: Accrual begins on February 21, 2025 or upon commencement of employment, whichever is later. Employers may choose to allow accrual to begin sooner than 2/21/25 if they wish, but as noted above, many will choose to wait until the effective date. Also, with respect to new employees, employers should remember that although *accrual* begins on the first day of employment, they may require employees to wait 90 days before *using* their earned sick time.

Q: Can employers provide more time than the ESTA requires (e.g., 80 hours per year) so long as they notify employees that the time can be used for the reasons stated in the law?

A: Yes, employers can provide more time than the ESTA requires, provided the time they provide allows employees to use earned sick time for the reasons stated in the Act and under the same conditions.

Q: Can earned sick time be frontloaded, or must it accrue at the 1 hour per 30 hours worked rate set forth in the ESTA?

A: Yes, employers may “frontload” (i.e., award sick time before it is earned) if they choose to because the ESTA does not prohibit them from doing so. However, employers who frontload time must take care to ensure the earned sick time still meets the accrual and use requirements set forth in the law. That is, the time an employee receives must still amount to at least 1 hour of earned sick time for every 30 hours worked, and they must be allowed to use the time for the reasons set forth in the law.

Q: What about salaried employees who do not clock in or out? Can their earned sick time be frontloaded based on their scheduled hours?

A: Yes. The ESTA presumes that an employee who is exempt from overtime requirements under the most common Fair Labor Standards Act exemptions works 40 hours in each workweek for purposes of earned sick time accrual unless their normal workweek is less than 40 hours. So, for example, an employer may assume that a full-time employee who qualifies under the “administrative” exemption to the FLSA works 40 hours per week for purposes of leave accrual and does not need to insist that the employee punch a clock to record his or her time.

Q: Can an employee use earned sick time under the ESTA while they are on leave under the Family and Medical Leave Act?

A: Yes. Reasons that qualify for leave under the FMLA are also qualifying reasons for using

earned sick time under the ESTA. Thus, earned sick time under the ESTA can be used concurrently with FMLA leave, which affords employees pay during at least a portion of their FMLA leave of absence, depending on the length of that leave.

Q: If we create a separate bank for earned sick time under the ESTA, do we have to pay employees for unused time upon termination of employment?

A: The ESTA 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. To determine whether the payment of earned sick time and other fringe benefits upon separation will be required, employers should look to any governing contract or policy, such as a collective bargaining agreement or employer policy.

Q: Does the ESTA require us to provide 72 hours of earned sick time on an employee's first day?

A: No. The ESTA does not mandate that new employees receive 72 hours of earned sick time on their first day of work. Rather, the law specifies that new employees must begin accruing earned sick time upon commencement of employment. The law also requires that employees be allowed to use earned sick time as it is accrued, except that employers may require employees to wait 90 calendar days before they begin using accrued sick time. Also, recall that ESTA's 72-hour requirement relates to *use*, not *accrual*. Earned sick time must accrue at a rate at least equal to 1 hour of leave for every 30 hours worked; thus, it is possible for employees to accrue *more* than 72 hours of earned sick time in a year, even if the employer caps use at that level.

Q: Can employers require an employee to provide notice that they intend to use earned sick time?

A: If the need for 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.

Q: What if the need to use earned sick time is not foreseeable? What sort of notice can employers require?

A: If the need for earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as "practicable."

Q: When can employers require employees to provide medical documentation to support their need to use earned sick time?

A: For earned sick time of *more* than three consecutive days, employers may require "reasonable documentation" that the sick time has been used for a purpose set forth in the ESTA. Upon request, employees must provide the documentation in a timely manner. Documentation gathered should not include a description of the illness or details of the violence necessitating the use of earned sick time. Also, if an employer requires documentation, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the

documentation. Finally, an employer may not delay the commencement of earned sick time on the basis that it has not yet received documentation.

Q: What are the carry over amounts for unused earned sick time under the ESTA and can we set a maximum number of hours that can be accrued and/or carried over?

A: All unused earned sick time gets carried over from one year to the next and employers may limit annual use to no more than 72 hours, but ESTA does not permit employers to set a maximum number of hours that can be accrued and/or carried over.

Q: What are the recordkeeping requirements for employers under the ESTA?

A: Employers must retain records that document the hours worked and earned sick time taken by employees for at least 3 years. If a question arises as to whether an employer has violated an employee's rights under the ESTA and the employer does not maintain or retain adequate records, the law imposes a presumption that the employer violated the Act.

Q: What about employees who are covered by a collective bargaining agreement that covers earned sick time? How does the ESTA affect their accrual and use of earned sick time?

A: If an employer's employees are covered by a CBA on the date the law takes effect (2/21/25), the ESTA applies beginning on the stated expiration date of that agreement, regardless of any statement in the agreement that it continues in force until a future date or event or the execution of a new CBA. For example, if a CBA expires on June 30, 2025, the ESTA will take effect as to the employees covered by the agreement on that date. From that point forward, any agreements the employer and union reach concerning earned sick time would need to meet or exceed the standards set forth in the ESTA.