

MICHIGAN’S EARNED SICK TIME ACT: QUESTIONS EMPLOYER’S SHOULD ASK THEMSELVES

Employer Worksheet to Prepare for ESTA Compliance

1. Do you currently offer paid time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<i>Employers will be required to offer paid sick time to all employees as of February 21, 2025. If you are already offering your employees paid time off, you may not need to add additional time off benefits to your offering, but you may need to restructure how your existing time off policies work to be in compliance with the ESTA.</i>	

2. How much paid time off do you offer per year?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<i>Employers will be required to offer a minimum of one hour of paid time off for every 30 hours worked to be used for the purposes outlined in the ESTA. Employers already offering more than this amount of time off (that can be used for any purpose) may satisfy this requirement. An additional bank of time may not be necessary.</i>	

3. Who is eligible to receive paid time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>ALL employees regardless of status or hours worked must be eligible to earn paid sick time as of February 21, 2025. This includes full-time, part-time, hourly, salary, temporary, seasonal, and independent contractors. You can retain your eligibility requirements for any additional time off you offer that is above and beyond the paid sick leave mandate, but for the ESTA provisions, all employees must be eligible to receive those.</i></p>	

4. How long does someone have to work for you before they can earn/accrue paid time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>For the purposes of paid sick time, employees are entitled to begin accruing this immediately as of the effective date of this Act, and upon hire thereafter. Employers can impose an initial 90-day waiting period for employees to access their accrued paid sick time, but the actual accrual must begin immediately. You can retain separate accrual schedules for any additional time off you offer that is above and beyond the paid sick leave mandate, but for the ESTA provisions, accrual begins on 2/21/25.</i></p>	

5. Do you currently allow for carryover of unused paid time off from one year to the next?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>Unused earned sick time under the ESTA must be allowed to carryover from one year to the next without limitation. You can retain carryover rules for any additional time off you offer that is above and beyond the paid sick leave mandate, but for the ESTA provisions, carryover is required.</i></p>	

6. Do you cap the number of paid time off hours you award each year?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>The ESTA requires that employees earn one hour of paid sick time for every 30 hours worked without limitation or annual maximum caps. You can retain annual maximum allotments for any additional time off you offer that is above and beyond the paid sick leave mandate, if you choose.</i></p>	

7. Do you cap the maximum number of hours an employee can have in their paid time off bank at any given time?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>The ESTA does not place a maximum on the number of hours an employee can accrue throughout the course of their employment. The only maximum limitation expressed in the Act is regarding the number of hours</i></p>	

	<p><i>an employee can USE in a given year. The ESTA caps that amount at 72 hours. You can retain maximum thresholds for any additional time off banks you offer, if you choose.</i></p>	
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8. Do you cap the maximum number of hours an employee can use from their paid time off bank at any given time?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>The ESTA has a cap on the total number of paid sick time hours an employee can use annually (72 hours) but does not impose a limit on the number of hours an employee can use at any one time, so long as it is less than 72 hours. If you choose to offer an additional bank of paid time off, you can place any limits you see fit on the number of hours that can be requested/granted at one time.</i></p>	

9. Do you dictate the increments of time (1-hour, 4-hour, 8-hour) that paid time off can be taken in?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>Under the ESTA, employees must be allowed to take accrued sick time in the smallest increment of time the employer's payroll/timekeeping system can track – not to exceed 1-hour increments. This will require that you learn about your payroll/timekeeping system's capabilities and</i></p>	

	<p><i>update your policy language and tracking of earned sick time accordingly. If you choose to offer an additional bank of paid time off, you can determine the increment of time those requests can be taken in.</i></p>	
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10. Do you have advanced notice requirements for employees who want to use their paid time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>Under the ESTA, employees wanting to access accrued paid sick leave only need to provide advanced notice of the request if the need for sick time is foreseeable. In those cases, the employer can require up to 7 days' advanced notice. If the need is not foreseeable the employee the employer cannot enforce advanced notice/call-in procedures, as the employee is only required to notify the employer 'as soon as practicable' in those situations – which is difficult to prove/enforce. If you want to retain your advanced notice/call-in procedures for any additional time off you may offer that is above and beyond the ESTA requirements, you will need to clarify your policy language.</i></p>	

11. Do you require documentation for the use of paid time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>If the employee is pulling from their earned sick time under the ESTA provisions, you are unable to request documentation to substantiate the absence unless the employee has been out for more than 3 consecutive days. Otherwise, you are unable to ask for supporting documentation for time off associated with ESTA. It is not clear yet how this prohibition applies to FMLA-related absences or fitness for duty assessments.</i></p>	

12. Do you enforce an attendance policy or point system to curb excessive time off?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>Employers are prohibited from retaliating against an employee for exercising their rights under the ESTA. Assigning attending points or disciplinary action to absences stemming from the use of earned sick time is viewed as retaliation under the law. You can still enforce attendance standards for time off that is not covered by the ESTA.</i></p>	

13. How do you notify your current employees and new hires of your time off policies?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>If you are like most companies, your time off benefits are explained in your employee handbook and perhaps outlined in an offer letter. That will likely not be enough under the ESTA provisions, which require employers to provide written notice to current employees and all new hires outlining the following:</i></p> <ul style="list-style-type: none"> • <i>The amount of earned sick time required to be provided to an employee under this Act.</i> • <i>The employer’s choice of how a ‘year’ will be calculated.</i> • <i>The terms under which earned sick time can be used.</i> • A prohibition on retaliation for an employee’s rights under this Act. • The employee’s right to bring a civil action or file a complaint with the department (State of Michigan) for any violation of this Act. <p><i>Notices must be written in English, Spanish and any other language spoken by at least 10% of the employer’s workforce.</i></p>	

14. Do you have defined banks for paid time off? I.e: sick, vacation, personal, medical, parental leave, etc.?

CURRENT POLICY	NEW REQUIREMENTS	CHANGES TO MAKE
	<p><i>If you are currently using separate banks of paid time off for sick vs. vacation/personal, you will need to ensure that your sick bank meets all the terms and conditions of the ESTA, including the broad range of reasons an employee could access this bank of time. Under the ESTA, employees can use their earned sick time for their own mental/physical health, to care for a family member’s mental/physical health, or to care for someone whose close association with the employee is the equivalent of a family relationship.</i></p> <p><i>If you currently combine all your paid time off into one general bank, you will need to determine if you want all the hours in that bank to be subjected to the rules and stipulations of the ESTA. If the answer is no, then you should consider splitting your banks apart and clearly defining the rules for each. Only the bank associated with sick time needs to follow the ESTA.</i></p> <p><i>If you currently offer no paid time off to your employees, you will need to develop a policy that offers paid sick time in accordance with ESTA standards no later than February 21, 2025.</i></p>	

	<p><i>If you offer unlimited paid time off (flexible time off) to your employees, you will still need to comply with employee notification and recordkeeping requirements of the ESTA. This may mean that you begin tracking the time off employees use and are careful about how you impose disciplinary measures if you determine an employee's absences to be excessive.</i></p>	
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15. What additional questions do you have that still need answers?

QUESTIONS	ANSWERS

This document was created by HRM Services to aid in employer compliance with the ESTA and is not meant to be used as legal advice.

QUESTIONS



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