FREQUENTLY ASKED QUESTIONS
MICHIGAN'S EARNED SICK TIME ACT 2.0

This FAQ was prepared by the Michigan Chamber to help members and employers comply with Michigan's Earned Sick Time Act (ESTA 2.0) as amended on Feb. 21, 2025 (MCL 408.961 et seq).

This document conveys general information; It should not be relied on as legal advice or opinion.

Last updated: July 24, 2025

Link to Michigan Department of Labor and Economic Opportunity Guidance FAQs here

BACKGROUND

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 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. Squeaking in under the deadline, the Michigan Legislature sent changes to the Earned Sick Time Act (ESTA) (HB 4002) and minimum wage law (SB 8) to the Governor's desk and she signed the bills on Friday, Feb. 21 as Public Acts 1 and 2 of 2025, with an effective date of Feb. 21 at 12:02 a.m. The Michigan Chamber was a steadfast leader in pushing changes to soften the blow to businesses through the legislative process and working to amplify the voices of thousands of Chamber members of every size and industry from across the state who contacted us to voice their concerns about the unworkable nature of the Supreme Court's decision and the laws as written.

WHAT ORGANIZATIONS MUST COMPLY

Q. Does my business need to comply with the new law? And, if so, when? And how do the "new business" provisions work?

A. The Act, which took effect at 12:02 a.m. on Feb. 21, 2025, applies to all employers, regardless of size. "Employer" is defined as "any person, firm, business, educational institution, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals. Employer does not include the United States government." After HB 4002 was passed, there was some speculation that nonprofits might be exempt but that has proven to not be the case; however, it does specify "If a small business did not employ an employee on or before February 21, 2022, the small employer is not required to comply with this act until 3 years after the date the employer first employs an employee."

The LEO FAQ (question 1)[1] says this:

- All Michigan employers that have one or more employee(s), excluding employees of the United States Government.
- Exclusions based on federal law: Railway workers and employers covered by the Railroad Unemployment Insurance Act (RUIA) are preempted from coverage under ESTA.

Q. Is there a small business exemption?
A. No, although employees working for businesses with 10 or less employees "shall accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit." The employer may also choose to frontload all 40 hours at the start of a year.

- LEO example (FAQ question 7): Merri works for a small business; she works 40 hours per week. By the end of the year, she may accrue up to 69 hours of earned sick time (EST), but the employer may limit Merri to only using 40 hours unless the employer selects a higher limit.

A "small business" is defined as "an employer for which 10 or fewer individuals work for compensation during a given week. 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 must 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 more than 10 employees on its payroll during any 20 or more calendar workweeks in either the current or immediately preceding calendar year."

- Small businesses have until 10/1/25 to comply with ESTA requirements.
- Remember: All employees of the employer within the U.S. or its territories must be counted for purposes of determining the total number of employees – even if they are working out of state or otherwise exempt from coverage.
    - Owners – The LEO FAQ (question 5) says owners "that are employees of the employing entity are included for purposes of calculating the number of employees. Owners that are not considered employees of the employing entity are not included. Owner(s) that are employees may be exempted from benefits if meeting the employee exemptions."
- Example used in the LEO FAQ (question 5): Marie is a local restaurant owner. She employs 8 individuals from January 2025 through March 2025, then employs 12 individuals for any 20 weeks from April 2025 through Sept. 2025. Due to staff leaving for school, her staff size is reduced to 8 employees again starting in Oct. 2025 and continuing indefinitely. Marie's restaurant was a small business from January 2025 until it reached the 20-workweek threshold. Once they reached the 20 or more workweeks with 10 or more employees' threshold, the restaurant will not be a small business for the remainder of 2025 and all of 2026. Starting in January 2027, Marie's Restaurant can again be considered a small business.

Q. How are new businesses handled by ESTA?
A. If a small business did not employ an employee on or before February 21, 2022, the small business is not required to comply with this act until 3 years after the date that the employer first employs an employee.

[1] The MI Department of Labor & Economic Opportunity's (LEO) FAQ can be found at https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/frequently-asked-questions--faqs

- Example: Jordan started a small business in October 2024, he employes 2 employees. His employees would begin to accrue earned sick time October of 2027.

WHAT EMPLOYEES ARE ENTITLED TO ESTA LEAVE

Q. Are all my employees eligible to receive and use earned sick time?
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, seasonal, and temporary – are entitled to accrue and use up to 40/72 hours of paid leave per calendar year. (See additional information under "Accrual, Frontloading, Waiting Periods….")

- Who's exempt? Those expressly exempt include (1) those employed by the U.S. government; (2) those working accordance with a policy that allows the individual to scheduled his/her own hours and has a policy that prohibits the employer from taking adverse personnel action if the individual does not schedule a minimum number of working hours; (3) unpaid trainees or unpaid interns; and (4) individuals employed in accordance with the Youth Employment Standards Act, MCL 409.101-.124.
    - As it relates to #2 above, the LEO FAQ (question 3) says this: " On-call, flexible scheduling, per diem employees, and similar are not covered by this exemption if the employer controls the schedule.
        - Example. An employer permits its employees to select periods of work from a posted schedule. Assuming circumstances justifying the use of earned paid sick time, on-call, flexible scheduled, per diem, etc., Employee may use available earned paid sick time for all or any portion of the work hours that Employee selects and is assigned."
- What about public officials? The LEO FAQ (question 3) also says this: 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.
- What about volunteers? The LEO FAQ (question 3) specifies exempt employees include volunteers under certain circumstances, referencing 29 C.F.R. §553.100 (2025).

Q. Are independent contractors eligible to receive earned sick time?
A. LEO's FAQ (question 2) says: "An eligible employee is an individual engaged in service to an employer in the business of the employer. Michigan case law uses the economic reality test to determine whether an individual is an employee."

Q. How does the ESTA apply to employees performing work outside the state of Michigan or working for organizations located outside the state of Michigan?
A. The LEO FAQ (question 4) was updated in July of 2025 to "clarify" guidance on how employees working out of state (e.g., in the trucking or airline industries and where employees are traveling intermittently to/from Michigan) must be treated by specifying that these employees, when they are sent out of state, are still accruing and eligible based. LEO's examples include:

- The ESTA applies to work performed by employees who are physically located in Michigan, regardless of the employer location.
    - Example: Kyle works remotely for an employer based in Chicago, he lives in Michigan and works out of his home office. Kyle would be entitled to the accrual and use of ESTA.
- The ESTA applies to work performed by employees whose employment is based in Michigan that are sent out of state by their employer to work in another location.

- Example: Kyle works for an employer in Michigan, he is assigned to perform work in Texas with his same employer. While in Texas Kyle continues to accrue and may use ESTA time.

- The ESTA may not apply to an employee traveling into Michigan for an employer when both are generally based outside of Michigan. An out of state employee coming into Michigan would not be covered unless the employee earned 50% or more of their compensation for time spent in Michigan.
  - Example: Kyle is a delivery driver who lives and works in Ohio. His employer routinely has deliveries in Michigan, for which Kyle makes the deliveries. Kyle would not be covered by ESTA unless 50% or more of his compensation was derived while working in Michigan.
- The ESTA applies to an employee accepting a Michigan based job regardless of the employee's residency.
  - Example: Kyle works in construction and lives in Ohio. Kyle accepts a job for a project in Detroit that is expected to last several months. While employed in Detroit, Kyle is covered by and can use ESTA.

Q. How are salaried employees (individuals exempt from federal overtime laws) treated?
A. They must be extended ESTA coverage, but 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."

LEO example: Sue is a part-time employee salaried at 15 hours per week. By the end of the year she would accrue 26 hours of Earned Sick Time. Andrea is a salaried employee at 40 hours per week. By the end of the year she would accrue 69 hours of Earned Sick Time. If at a small business, Andrea could be limited to using 40 hours, at any other business Andrea could use all accrued hours.

ACCRUAL/FRONTLOADING, WAITING PERIODS, INCREMENTS, ATTENDANCE POLICIES

Q. How must time be accrued?
A. Employees "must accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 72 hours of paid earned sick time in a year, unless the employer selects a higher limit." All hours must be counted, including overtime. (See below regarding small businesses.)

- Frontloading. As an alternative to the accrual of paid earned sick time, an employer may provide an employee not less than 40/72 hours of paid earned sick time at the beginning of a year for immediate use. If frontloading, employers only need to track how many hours of earned sick employees have used annually; no carryover or tracking of accrual is required. However, employers choosing to frontload cannot require a 120-day waiting period for new hires.
  - LEO says time can be frontloaded on a prorated basis if they become eligible in the middle of the employer's benefit year.
- Part-time employees. These employees may also be frontloaded time (employer choice) in accordance with the following requirements: (1) the employer provides the employee with a written notice of the estimated hours s/he is expected to work for a year at the time of hire; (2) the amounts of earned sick time frontloaded must be proportional to the time the employee would accrue if s/he worked all expected hours; (3) the employer must provide additional time if the employee works more hours than expected. Note: LEO has said they interpret "part-time" as anyone working less than 40 hours per week.
- Small business employees (10 or less): These employees shall accrue a minimum of one hour of EST for every 30 hours worked but, shall not be entitled to use more than 40 hours of paid EST in a calendar year unless the employer selects a higher limit.

NOTE: *Unlike the Paid Medical Leave Act*, which the Supreme Court invalidated, ESTA does NOT specify that an employer may cap accrual to one hour of leave in a calendar week. Under ESTA, if the employee works a 40-hour workweek, the employee will accrue one hour for the first 30 hours worked and the additional five hours worked would be counted towards the next increment earned.

Q. Can I frontload for full-time employees and do the accrual method for part-time employees? Or can I switch companywide from year to year?
A. You are welcome to use the accrual method in year one and then switch to frontloading in year two. Likewise, you can treat different classifications of employees differently (e.g., frontload full-time employees, use accrual for part-time). This is also answered by LEO (question 8 of the FAQ).

Q. Employees only accrue ESTA time based on the hours they worked. So, if an employee only works 24 per week, they would not accrue 72 hours of ESTA annually. Are we required to give them 72 hours of ESTA anyway?
A. No, they only need to accrue 1 hour per 30 hours worked. Not all employees will accrue the full 72 hours. See the question above related to frontloading part-time employees (anyone working less than 40 hours/week).

Q. Does time accrue when an employee is on vacation or on 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, not including hours used as paid time off. In other words, if they aren't working because of vacation or a holiday, they don't accrue the time.

Q. When is earned sick time available for use by an eligible employee?
A. Except for small businesses, employees employed before February 21, 2025, begin accruing time and may use accrued hours immediately. An employer using the accrual method (not those frontloading) may require a new employee, hired on or after February 21, 2025, to wait until the 120th calendar day after commencing employment before using accrued earned sick time.

Q. My payroll provided only accounted for accrued time on a biweekly process. Is this a problem?
A. Yes. An 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. ESTA can be used for scheduled "work hours" but what does this term mean?
A. The LEO FAQ (question 15) says this: Employers may require on-call employees' use of ESTA for periods of time in which the on-call employee is scheduled to work, or periods of time that the on-call employee would be scheduled to work but for circumstances justifying the use of earned paid sick time. Example: Rose is an on-call Employee, she is scheduled to work for five consecutive days. Assuming circumstances justifying the use of earned paid sick time, Rose may use available earned paid sick time for all or a portion of the scheduled five-day period. Example two: Jacob receives a call from his employer to work the same day and the following day. Assuming circumstances justifying the use of earned paid sick time, Jacob may use available earned paid sick time for all or any portion of the two days. Example three: Elizabeth's employer permits their employees to select periods of work from a posted schedule. Assuming circumstances justifying the use of earned paid sick time, on-call Elizabeth may use available earned paid sick time for all or any portion of the work hours that she selects and is assigned.

Q. Do I have to offer more than 72 hours of leave per year?
A. An employer is not allowed to cap accrual at 72 hours but may cap *usage* at 72 hours in a given year. The employer may also choose to offer a more generous benefit (whether it be more sick time, vacation time or a mix).

Q. When does an employee's time start to accrue?
A. "Small businesses" do not need to allow employees to begin accruing until October 1, 2025, or upon commencement of the employee's employment, whichever is later. For all other employers, accrual begins on the effective date of the Act or upon commencement of the employee's employment, whichever is later. ESTA does allow employers using the accrual method to require new employees to wait until the 120th calendar date after commencing employment to begin *using* their time – but time must begin accruing time upon hire. This waiting period should prove helpful to certain seasonal employers.

Q. Most of our employees have already accrued 40 hours in this calendar/benefit year. Are we in compliance for year one?
A. LEO has indicated that they will not recognize time given prior to 2/21/25. However, for year one, employers can prorate time given to employees beginning 2/21/25 through the end of the current "year." The LEO FAQ (question 15) says this:

- Example: The employer intends to use the calendar year for purposes of ESTA, the employer may frontload based on the period from February 21, 2025 through the end of 2025. Formula: Feb 21 to Dec 31 equals 314/365 days, or 86%. An employer could frontload 62 hours for 2025. Small employers are not obligated to begin until October 1, 2025.
- Michelle's employer frontloads 80 hours of PTO time on January 1. They allow their employees to use their PTO time for sick, vacation and personal. Michelle used 40 hours of time in January. Michelle's employer on February 21st increased her bank to 62 hours meet ESTA requirements for prorated year.
- Larry works for the same employer as Michelle, he did not use PTO time between January 1st and February 21st. His PTO bank remains at 80 hours. Larry's bank meets the frontloading requirement for a prorated year.

Q. Can the benefit year be backdated to 1/1/25 if we have already been accruing time for employees at a higher rate than required?
A. No. Unfortunately, there is a year one issue with ESTA. The state will not recognize time given prior to the 2/21/25 start date. If you frontload, that means you will need to ensure that every employee receives (at minimum) what they would have gotten had your "benefit year" you started on 2/21. For example, if you had a January 1 start to your benefit year, all employees will need to have at least 62 hours in their PTO bank as of February 21 to be able to use through 12/31/25. Of course, that creates a winners and losers situation for year one (winners are those who have already blown through their time this year because they'll get more time). However, it seems that is the best way to get yourself in compliance for year 1. Another option would be to use the accrual method for employees for the first year the new law is in effect.

Q. Do Paid Medical Leave Act (PMLA) hours an employee has already used from Jan 1 - Feb 21 count toward the 72-hour allotment for 2025 or do we have to give additional hours?
A. LEO has said this: Our only ongoing obligation regarding PMLA would be in the event we receive a complaint from failing to follow PMLA prior to February 21, 2025. Any accrued time as of February 21, 2025, under accrued but unused PMLA is in essence no longer a regulatory obligation. If an employer uses that bank for

purposes of ESTA that would be their discretion not an obligation under ESTA. ESTA applies from Feb 21 forward, so any time used prior to Feb 21 is not something we would look at for ESTA compliance.

Q. Can I give an employee all of his or her time at the beginning of the calendar or benefit year?
A. Yes, see the question above related to accrual/frontloading.

Q. If you frontload and an employee uses all their time and quit, can you deduct from their check time used but not up to accrued levels?
A. LEO has said an employer may recoup frontloaded sick time at the time of separation if the employee uses more than what would have been accrued as of the date of separation. "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 this deduction does not reduce the final paycheck to less than the minimum wage and the employer obtained a prior written, voluntary agreement for the deduction." We believe this recoupment is subject to the Payment of Wages & Fringe Benefit Act and its provisions, which specifies and employer "shall not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit."
(https://legislature.mi.gov/Laws/MCL?objectName=mcl-Act-390-of-1978 – Sec. 4)

Q. Is it true the Act allows time to be used in less than full/half-day increments?
A. Employees must be able to use time 1 hour increment or the smallest increment the employer uses to account for "absences of use of other time." One-hour increments are the default (and max).

Q. An employee is absent for a full 8-hour day. If an employee only has 4 hours of ESTA time available, can they be held accountable to our attendance/points policy for the other 4 hours of the day?
A. This question was addressed in LEO's webinar. Sean Egan, the deputy director who facilitated the webinar, said that once an employee exhausts his or her ESTA hours (or PTO if you're combining), your non-ESTA policy would govern the situation. He even went as far as to say that if you combine ESTA with PTO and the employee calls in sick but doesn't tell you they want to use ESTA time, you can apply attendance points. (However, a general rule to follow would be to document these situations well.) LEO used this example: You have a combined PTO bank, say, 120 hours annually. If the employee uses 72 hours for vacation, is the remaining 48 hours governed by the ESTA rules? Answer: Yes, but once the 120 hours is gone, there's nothing left to protect (ESTA protections don't apply).

Q. Can we apply attendance bonuses/points to ESTA leave?
A. Employers will have difficulty assigning bonuses and points if the employee is using ESTA time because these bonuses/points run counter to ESTA. However, you can still apply either for non-ESTA time.

Q. If you have a chronic "sick" employee that continually uses the time they earned and goes beyond the ESTA amount and they go unpaid, are we allowed to discipline this employee per our normal attendance policy?
A. Once ESTA time is used up, the ESTA protections do not apply to future absences. However, we would advise consulting with an attorney before taking disciplinary action.

CARRYOVER, REINSTATEMENT

Q. Must time be carried over?
A. Employers using the *accrual* method must allow carryover but may cap the carryover of time at 40/72 hours. They can also pay out annually to avoid carryover requirements. For employers choosing to frontload time, it can be use-it-or-lose-it.

- The LEO FAQ (question 23) says this: "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? Yes, if the employer uses the accrual method for calculation of earned sick time, the employer can choose to create a policy that allows employees to be paid out or carry over up to 40 hours, for small business, and 72 hours for other employers. The employer may pay out at termination or separation."

Q. What if an employee is rehired or is transferred; must his/her time accrued be reinstated?
A. Yes, if an employee separates from employment and is rehired by the same employer within 2 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 – so long as it wasn't paid out. Accrued time transfers when an employee transfers to a separate division, entity or location by the same employer. In the case of a successorship, time must also transfer unless it is paid out.

- LEO's FAQ (question 14) says this: "Employees separated from employment for 2 months or less maintain all accrued earned sick time prior to the separation, begin accruing additional hours upon reemployment, and may use any accrued hours. Employees transferred to another classification or location with the same employer maintain all accrued hours and continue accruing hours unless paid out at separation."
- Employees separated from employment with the same employer for more than 2 months lose all accrued, unused earned sick time, unless the employer's policy allows these hours to be maintained.
- LEO reminds employers: 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. If you feel this might apply to your workplace, you should consult legal counsel.

DEFINING A 'YEAR'

Q. How is a "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" means a "regular and consecutive 12-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.

ESTA-RELATED USES

Q. For what purposes may an employee use sick time?
A. The ESTA goes beyond what many employers cover under their sick leave policies today. While we encourage you to review the language in the ESTA (link above), it allows employees to 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. 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, 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 "an individual whose close association with the employee is the equivalent of a family relationship."

Q. Can the employer make an employee use their sick leave before using other types leave? If an employee misses hours and does not designate how they want hours compensated, can ESTA time be used for payout before no pay?
A. LEO's FAQ (question 29) says: "No, an employee must request the use of Earned Sick Time." LEO's interpretation is that employees may even elect to take unpaid leave for doctor appointments and other ESTA-related purposes while still having ESTA time available (although in this instance it could not be job-protected time off and subject to your normal policies regarding notice, increments, etc.).

COMBINING ESTA WITH PAID TIME OFF (PTO)

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. ESTA 2.0 greatly improves the ability of employers to provide a single PTO bank, saying it's allowable if employer's policy meets either of the following conditions: (1) provides the employer's employees with PTO not less than the same amounts of time off as provided under ESTA (72/40 hours) and (2) may be used for a purpose described under the act OR any other purpose. The employer is not required to allow an employee to use PTO for a purpose described in ESTA in an amount that exceeds the amount of time off provided under the act. Although not strictly required by the ESTA, some employment attorneys have suggested in makes sense to ask employees to indicate via time off requests that PTO is being used for ESTA-related purposes due to the record keeping requirements under the Act (and the fact that they must be available for inspection by LEO).

- The LEO FAQ (question 19) says this:
    - "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."
    - "If my employer created a combined bank of time that includes PTO, Vacation and Sick. Am I entitled to more sick time if I used all my time on vacation? No, if the employer has provided you with time to use as PTO, Vacation or sick, and they have met the accrual minimums for ESTA, you are not entitled to more time."

Q. If an employer offers a single PTO bank and an employee doesn't specify reason for usage or has indicated it was all for personal reasons, what happens if the employee exhausts all PTO and then says they have an ESTA event? Is the employer required to give them additional time?
A. No, no additional time is required to be given.

Q. Even if I combine banks, should I ask employees to denote that they are using ESTA-related PTO?
A. The general feeling (although not in the law) is that tracking PTO for ESTA-related purposes is probably advisable. This is because the state may inspect your records going back three years, including hours worked

and earned sick time taken. If there's a dispute about whether you allowed EST to be taken, a general accounting of your PTO may end up being insufficient to prove you were in the right. As such, many employers are opting to have employees submit for PTO and then simply denote if it's being taken for one of the EST-related reasons.

DOCUMENTATION, QUESTIONS AND COORDINATION WITH THE FMLA

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." The employee must provide the documentation within 15 days after the employer requests it. However, the Act specifies: "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 for purposes of this subsection." Employers should not require documentation to include a description of the illness or details of the violence. LEO's FAQ (question 31) says: "Employers must maintain the confidentiality of health, domestic violence, and sexual assault information about an employee or his or her family member and cannot disclose the information to others without the employee's permission."

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 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 of "all out-of-pocket expenses" is undefined and will be subject to interpretation by LEO.

Q. May an employer ask questions regarding the need for using earned sick leave?
A. The LEO FAQ (question 28) 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 the ESTA interact with FMLA?
A. The LEO FAQ (question 30) 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 or other covered leave, the FMLA or other leave provisions apply."

RATE OF PAY

Q. How is the pay rate calculated?
A. ESTA 2.0 says: "An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage or base wage for that employee or the minimum wage established under [Michigan law]…." ESTA 2.0 clarifies that an employee's normal hourly rate (i.e., the rate used to calculate ESTA pay) does NOT include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities. Note: In our conversations with LEO, we believe tipped employees must be paid the full minimum wage ($12.48/hour in 2025).

ADVANCED NOTICE

Q. Can I require an employee to provide advance notice for absences?
A. It's kind of complicated:

- Foreseeable events: Can require up to 7 days advanced notice before the date the earned sick time is to begin.
- Unforeseeable: May require the employee to give notice in either of the following manners: (1) as soon as practicable or (2) in accordance with the employer's policy on requesting/using sick time or leave IF (a) on the date of hire, or Feb. 21, 2025, whichever is latest, provides the employee with a written copy of the policy that includes procedures for how the employee must provide notice and (b) that notice requirement allows the employee to provide notice after the employee is aware of the need for the EST.
- An employer requiring notice for sick time that is not foreseeable "shall not deny an employee's use of earned sick time that is not foreseeable if…the employer did not provide a written policy to the employee…[and/or]…the employer made a change…and did not provide notice of the change within 5 days after the change."
  - LEO also says this about recourse for employers who have employees failing to follow established notice and documentation policies: "Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements. An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under ESTA. An employer's absence control policy must not treat earned sick time taken under ESTA as an absence that may lead to or result in retaliatory personnel action, unless the employee does not follow the employer's written policy for notice as described above. An employer may take adverse personnel action against an employee if the employee uses earned sick time for a purpose other than a purpose described or violates the notice requirements under this act. The protections of ESTA apply to any person that mistakenly but in good faith alleges a violation of this section."
  - LEO example (see FAQ question 25): Ben's employer typically requires its employees to provide at least 24 hours advance notice of any absence per written policy. Two hours before Ben's shift, his child develops stomach pains and Ben needs to take her to the doctor. Under these circumstances, Ben does not need to comply with his employer's 24-hour advance notice policy; rather, he should provide notice as soon as practicable of his ESTA use. Example two: Joe's employer has a written policy requiring seven days advance notice from its employees for sick and safe time use when the absence is foreseeable. Joe schedules a preventative care check-up for his daughter several months in advance of the check-up but forgets to inform his employer until two days before the appointment. Under these circumstances, the employer may deny Joe's use of ESTA for the appointment as its written policy meets ESTA requirements and the ESTA use was foreseeable.

Q. How is no call no show impacted by ESTA?
A. The LEO FAQ (question 27) says this about the ability to be no-call, no-show: "Generally, no [not allowed]. Under extreme circumstances, for example the employee is incapacitated and unable to give notice. The employee must provide notice as soon as practicable. The employee may be disciplined following employer's policy and procedures" (so long as they complied with ESTA's foreseeable/not foreseeable rules – see question above). Employers who may be considering disciplining or terminating under for excessive absences are encouraged to check with legal counsel before proceeding.

COLLECTIVE BARGANING AGREEMENTS

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 and the collective bargaining agreement conflicts with 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's FAQ (question 9) says this:

- If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the stated expiration or amendable date in the collective bargaining agreement.
    - 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, becomes amendable, or is renewed, extended, or otherwise renegotiated. The agreement also applies in situations where the agreement expressly excludes sick leave benefits.
        - Example: Armando's works for an employer that is covered under a collective bargaining agreement. This agreement was signed November 2024 and includes 40 hours of sick time to covered employees. This agreement offers a benefit that conflicts with ESTA. The act would apply upon expiration of their collective bargaining agreement.
- 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 February 21, 2025, unless they are a small employer as outlined above.
    - Example: Nick works for an employer that has signed a collective bargaining agreement. The agreement expires June 2026 and does not include sick time benefits. On February 21, 2025, Nick would be entitled to ESTA.

RECORDKEEPING

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's Wage and Hour Division access to those records "with appropriate notice and at a mutually agreeable time."

COMPLIANCE, EMPLOYEE RIGHTS AND PENALTIES

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 and other languages spoken by employees, in addition to English. Order compliant posters today: www.michamber.com/posters.

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 by **March 23, 2025,** stating: (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 file a complaint with the State for any violation of the act. A "Sample ESTA Employee Notification Letter" can be found in our compliance toolkit at https://www.michamber.com/content_resources/paid-leave-minimum-wage-toolkit-download/.

Q. Does the law create new rights for employees? What are the penalties for noncompliance?
A. No, the right to go straight to court with a complaint was stripped from ESTA 2.0. It also stripped the "rebuttable presumption" – which would have specified 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.

- There are civil remedies afforded to affected employees. An employer who fails to provide earned sick time is subject to a $1,000 administrative fine, and potentially an additional civil fine up to 8 times the employee's normal hourly wage. An employer who willingly violates the posting requirement is subject to a $100 administrative fine for each separate violation.
- An employee has three years after the alleged violation to file a complaint.