



EARNED SICK TIME ACT
REVISIONS

FEBRUARY 24, 2025

HOW WE GOT HERE

July 31, 2024 – February 21, 2025

- MI Supreme Court Decision from July 31, 2024, was set to go into effect on February 21, 2025
- Democrat trifecta refused to take action before the end of 2024, despite efforts of business community and other stakeholders
- House Republicans sent bills to the Senate 2 weeks after taking control
- Senate and Governor finally engaged at the end of January 2025 – thanks to grassroots action
- Negotiations were between House Republicans and Senate Democrats
- Unions, Progressive Groups, and Trial Lawyers opposed ANY changes
- Senate Democrats refused any small business exemption

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ESTA: Legal Changes

REBUTTABLE PRESUMPTION (Guilty Until Proven Innocent) is REMOVED

PRIVATE RIGHT OF ACTION FOR EMPLOYEES (Ability to Sue) is REMOVED

EARNED SICK TIME

Earned Sick Time Act (ESTA): Who is Covered & How Much

- Applies to ALL employers
- Applies to ALL employees include part-time, temporary, seasonal
 - Youth workers under 18 exempt
 - Unpaid interns and unpaid trainees
 - Independent Contractors (1099 employees)
- Employees earn 1 hour for every 30 hours **worked**
- Employees of small businesses who ten or less employees not be entitled to use more than 40 hours of ESTA
- Employees of businesses with over 10 employees are not entitled to use over 72 hours a year
- Applies to ALL employers
- Applies to ALL employees include part-time, temporary, seasonal
- Employees accrue one hour of paid earned sick time for every 30 hours worked but will not be entitled to use more than 72 hours per year
- Employees of small businesses who have less than ten employees not be entitled to use more than 40 hour of PAID leave. If the employee accrues more than 40 hours, he or she will be entitled to use an additional 32 hours of unpaid earned sick time.

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Small Business Definition

Small Business Definition:

An employer is considered a “small business” if it employs 10 or fewer employees. This includes full-time, part-time, and temporary employees including those provided through a temporary service or staffing agency or similar entity.

All employees of the employer within the United States or its territories are included for purposes of the total number of employees.

Once an employer employs 11 or more employees for 20 or more work weeks in the current or prior calendar year, the employer cannot be a “small business” again until it meets the requirements above.

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New Business Exemption & Employment Contracts

New Business Exemption:

Small business that 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.

Employment Contract Exemption

Employees under an employment contract signed before December 31, 2024, that are not more than 3 years are exempt from ESTA until the contract expiration date

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ESTA: Accrual

- Accrual for businesses with **more than 10 employees** will begin from February 21, 2025, or date of hire
- Accrual for small businesses with **less than 10 employees** will begin from October 1, 2025, or date of hire
- An employee who is exempt from overtime is considered to work 40 hours in each work week unless the employee's normal work week is less than 40 hours

Will begin accruing from February 21, 2025, or date of hire

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ESTA: Rate of Pay

- Earned sick time must be paid at a pay rate equal to the greater of either an employee's normal hourly wage or base wage and must meet or exceed the Michigan minimum wage rate.
- ESTA does not require an employer to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities in the calculation of an employee's normal hourly wage or base wage.
- 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, not when based on when they earned it

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ESTA: Use

- ESTA can be used in one-hour increments unless the employer allows smaller increments
- ESTA can be used immediately upon accrual for current employees:
After 30 hours worked beginning February 21, 2025, or October 1, 2025
- Employer can require up to 120 days of employment before use of earned sick time
- All earned sick time carries over and must be reinstated if the employee separates for less than 2 months (unless earned sick time was paid out or time was frontloaded)

The employee may use the 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

Can require 90 days of employment before use

All earned sick time carries over and must be reinstated if the employee separates for less than 6 months

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ESTA: EMPLOYER OPTIONS

Employers Now Have Options on How They Can Provide Earned Sick Time:

- Accrual
- Frontloading
- PTO

Benefit Year is defined by the employer – it can be any consecutive 12-month period – needs to be written in employer handbook/policies

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ESTA: Accrual

- Track 1 hour for every 30 hours worked
- Track hours used
- Limit use to 40 or 72 hours per year depending on size of employer
- Carry over from year to year can be limited to 40 or 72 hours depending on size of employer
- Employer can pay unused accrued sick time at the end of the benefit year in place of carrying over time

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ESTA: Frontloading

- An employer may frontload at least 40 hours or 72 hours depending on employer size for earned sick time at the beginning of the benefit year or on the date that the individual becomes eligible during the benefit year on a prorated basis.
- For part-time employees an employer may frontload the expected amount of earned sick time to be accrued in a year at the time of hire
- Provide the part-time employee a written notice of how many hours are expected to be worked in a year
- If part-time employee works more than expected, the employer must make up the amount
- No carry-over or tracking of earned sick time is necessary when frontloading

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ESTA: Paid Time Off (PTO) and Separate Banks

- An employer can use one bank of time as long as that time can be used for the same purposes as outlined in the ESTA
- Must meet or exceed the amount of time off outlined in ESTA
- Does not need to provide additional earned sick time (eg: if you give 80 hours PTO you are covered)
- If you have two separate banks of earned sick time and vacation, you cannot require an employee to use one or the other first
- Can require earned sick time to be used concurrently with FMLA

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ESTA: Use (not change)

- Employee or family mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's or the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care
- Any appointments or issues if employee or the employee's family member is a victim of domestic violence or sexual assault,
- For meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; and
- For closure of the employee's place of business by order of a public official due to a public health emergency
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

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ESTA: Notification

If the need for earned sick time is not foreseeable, an employer may require:

- The employee to give notice of the intention to use earned sick time as soon as practicable. 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.
- In accordance with the employer's policy related to requesting sick time or leave if the employer provides to the employee a written copy of the policy
- If the need for earned sick time is foreseeable, an employer may require advance notice not to exceed 7 days before the date the earned sick time is to begin.

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ESTA: Notification

- For earned sick leave of more than three consecutive days, an employer may require reasonable documentation. Upon request, the employee must provide this documentation in not more than 15 days after the employer's request.
- Employer required documentation should not include a description of the illness or details of the violence.
- If an employer requires documentation, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation.
- An employer cannot delay commencement of the leave based on a failure to receive documentation.

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ESTA: Notification – No Call No Show

DIRECTLY FROM LEO FAQ:

Can an employee no call no show for three days without recourse?

Generally, No. Under an extreme circumstance, 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.

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ESTA: Recordkeeping & Legal

- Must provide written notification policy on the effective date of ESTA, the date the policy goes into effect, the date of hire, or within 5 days of any changes
 - Must include procedures for how the employee must provide notice and the employer's notice requirement allows the employee to provide notice after the employee is aware of the need for earned sick time.
- Must retain records for 3 years
- Not required to pay out sick time if the employee separates
- Employer must post ESTA poster provided by LEO by March 23, 2025. This can serve as employee notice on ESTA rights.

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ESTA: Anti-Retaliatory Provision

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.

RESOURCES

[LEO Earned Sick Time Act FAQ](#)

[Required Poster from LEO](#)

Questions? Email Amanda Fisher at Amanda.fisher@nfib.org

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