



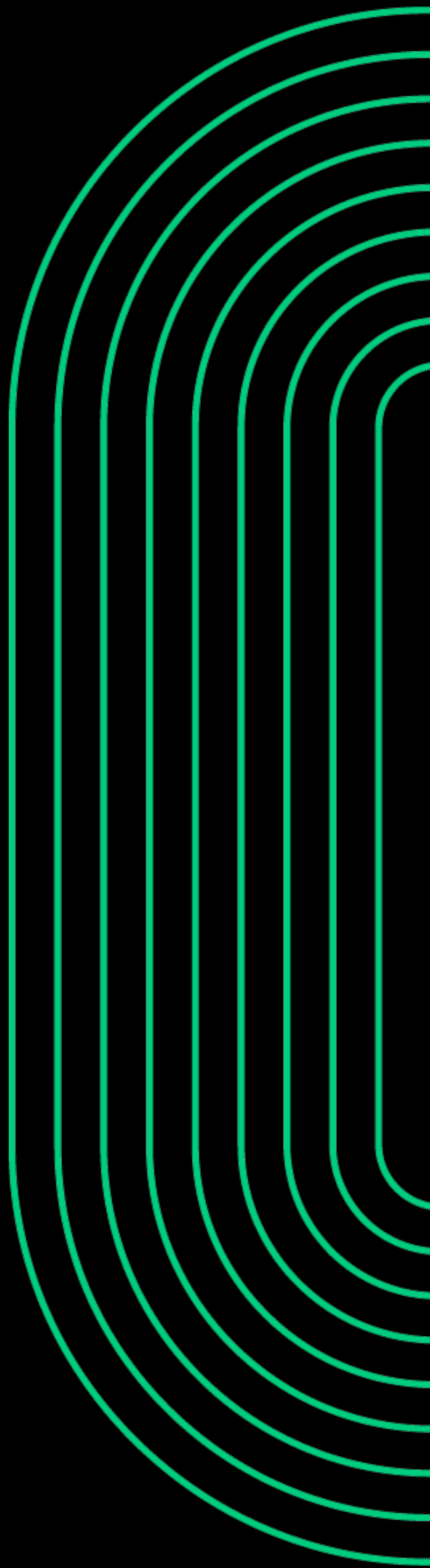
Complying With Michigan's ESTA

Session 130b

Michigan School Business Officials

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Michigan Earned Sick Time Act (ESTA)



- Went into effect February 21, 2025.
- Law requires most Michigan employers, including school districts, to permit employees to accrue and use paid earned sick time.
- ESTA sets the **minimum requirements**.
- For CBAs in effect on February 21, 2025, and conflict with ESTA, CBA provisions apply until expiration of CBA.

Michigan ESTA Overview

- Guarantees employees the right to earned sick leave.
- Employers do not have to create a “separate bank” of sick time from the rest of PTO.
- Employees are entitled to pay equal to their normal hourly wage or base wage.
 - Does not include holiday pay, overtime, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities in the calculation.



Who Is An Employee?

- Employee: “An individual engaged in service to an employer in the business of the employer.” **Very broad definition**, and most individuals working in school districts will meet this definition.
- “Employee” does not include:
 - US government employees.
 - Unpaid trainees or unpaid interns.
 - Individuals employed in accordance with the Youth Employee Standards Act.
 - Individuals working for an employer pursuant to a policy with the following conditions:
 - The policy allows the individual to schedule their own working hours, and
 - The policy prohibits the employer from taking adverse personnel action (i.e., discipline) against the individual if they do not schedule a minimum number of working hours.



What Is a Year?

- A “year” is defined as “a regular and consecutive 12-month period, **as determined by an employer.**”
- Employers get to choose the 12-month period.
- Most schools likely opt for “school year” as the benefit year (July 1-June 30).



ESTA Accrual

2 Options for Granting Earned Sick Time: Accrual and “Frontloading”



1st Option: Accrual Per Hour

- Minimum of 1 hour of paid earned sick leave for every 30 hours worked. (Requires greater tracking by employer)
- Only entitled to use up to 72 hours per year.
- Only entitled to carry over up to 72 hours for the subsequent year.
- May restrict use of sick leave for the first 120 calendar days of new hires.
- If the individual is a salaried employee and exempt from overtime under FLSA, it is assumed they work 40 hours per week for purposes of accrual, unless the employee's normal workweek is less than 40 hours.



2nd Option: “Frontloading”

- Provide at least 72 hours of paid earned sick leave at the beginning of the year for immediate use.
- Only entitled to use up to 72 hours per year.
- Not entitled to carry over year-to-year.
- Cannot restrict use for first 120 calendar days of new hires.



Part-time Employees



- Schools can use different methods for different employee classifications.
- **Part-time employees** can either accrue or be frontloaded time based on an “expected” number of hours to be worked for the year.

Permissible Uses of Sick Leave

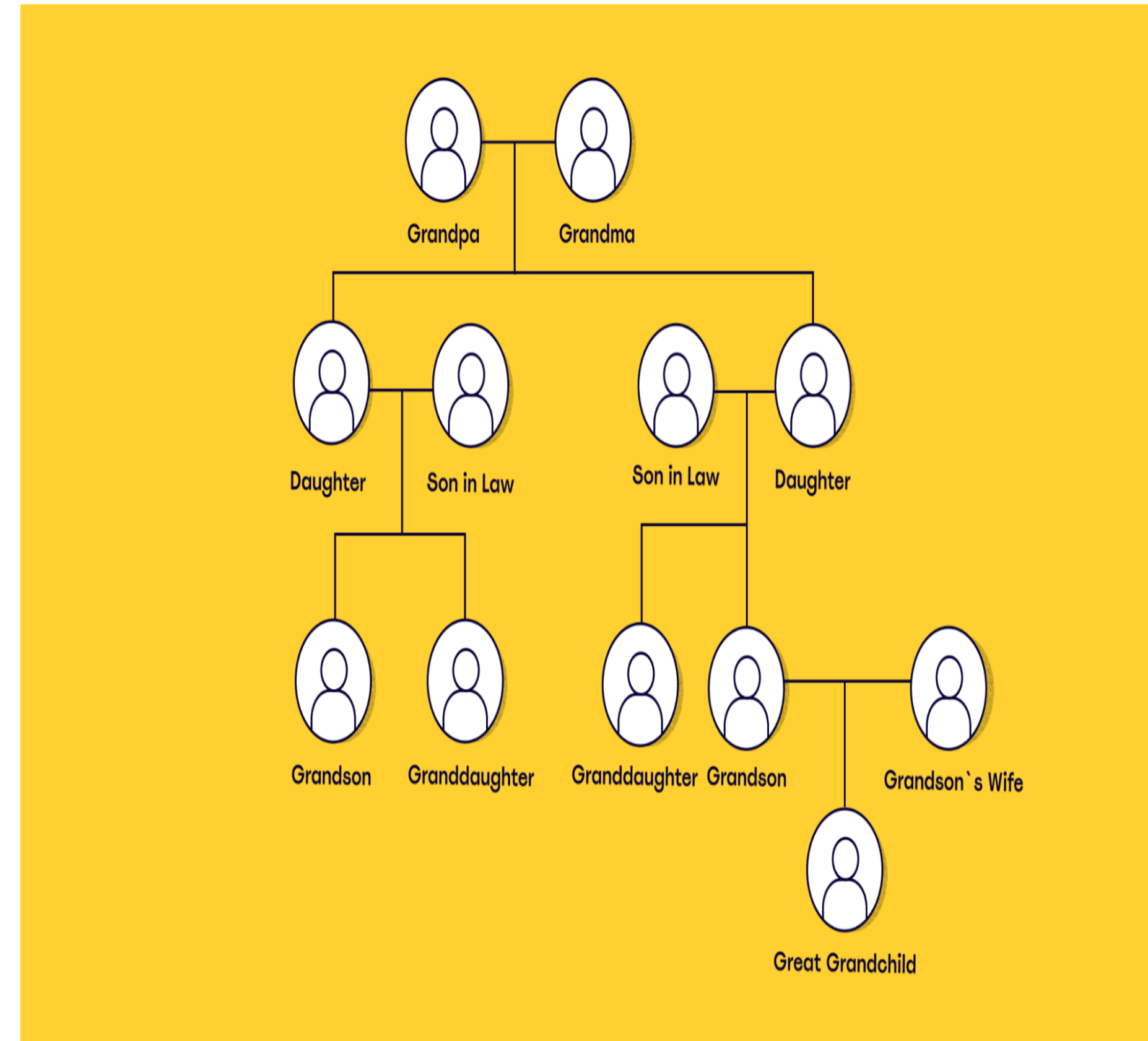
ESTA outlines 5 main categories of permissible sick leave usage:

1. Employee's mental or physical illness, injury, or health condition, including medical diagnosis, care, treatment, or preventative treatment.
2. Employee family member's mental or physical illness, injury, or health condition, including medical diagnosis, care, treatment, or preventative treatment.
3. Medical care or counseling for an employee or employee family member who is a victim of domestic violence or sexual assault, or to obtain legal services or attend civil/criminal proceedings.
4. Meeting at employee child's school or place of care related to the child's health or disability, or effects of domestic violence or sexual assault.
5. Closure of employee's place of business by public official due to public health emergency, care of child whose school or place of care is closed due to public health emergency, or as determined by health authorities or health care provider, the employee or family member's presence in community would jeopardize the health of others.



“Family Member” Reminder

- Many CBAs define a family member with a specific list of individuals.
- It is important to include who is a “family member” pursuant to ESTA, which is **extremely broad**:
 - 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, or adoptive parent or a legal guardian of an employee or an employee’s spouse or domestic partner or an individual who stood in loco parentis when the employee was a minor child.
 - A spouse or domestic partner.
 - A grandparent or grandchild.
 - A biological, foster, or adopted sibling.
 - An individual related by blood to the employee.
 - An individual whose close association with the employee is “equivalent” of a family relationship.



Notice Requirements for Employees

Foreseeable Need vs Unforeseeable Need

- If the need for sick leave **is** foreseeable:
 - Employer may require advanced notice not to exceed 7 days before the date of usage.
- If the need for sick leave **is not** foreseeable:
 - Employer may require that the employee give notice as soon as practicable, judged based on “reasonableness.”
 - Alternatively, employer may require notice in accordance with the employer’s policy related to requesting sick leave if the employee is provided a written copy of such policy that includes the procedures for how the employee must provide notice.
 - This notice requirement must allow the employee to provide notice after the employee is aware of the need for earned sick time.



Notice Requirements for Employees

- Employees generally cannot “no-call no-show.”
 - Employers sometimes have policies regarding “job abandonment” for failing to report to work or call in for 3 consecutive days.
- Employers can implement discipline or other adverse employment actions for failing to call in and follow notice requirements, except in extreme circumstances.
 - Example: Employee is incapacitated at the hospital and cannot notify his employer.



Limitations on Documentation Requests

- ESTA limits the ability of employers to request verification of illness.
- For earned sick time of **more than 3** consecutive days, employer may require reasonable documentation that the leave is being used for a permissible reason.
- Employee must provide documentation within 15 days.



Limitations on Documentation Requests

- Employer is responsible for all out-of-pocket costs the employee incurs in obtaining the documentation.
 - If the employee has 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.
- Employer cannot delay commencement of leave based on failure to receive documentation.
- Employer cannot require the employee to search or secure a replacement worker as a condition of using leave.



What Can Employers Ask?



- Prior to the ability to request medical verification, an employer can ask questions regarding the need for using sick leave.
- Employees should provide sufficient information so that the employer can determine whether the leave meets one of the eligible uses under 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.

Sick Leave Payouts and Employee Separation



- Oftentimes CBAs provide for a PTO “payout” upon separation, termination, retirement, etc.
- ESTA does not require such payouts, but employers may adopt these policies.
- Employee rights to sick leave upon return to employment:
 - If employee separates from employment and returns within 2 months, the employer must reinstate previously accrued, unused sick time.
 - Not required to reinstate if the employer paid the employee **the value** of the employee’s unused sick time at the time of separation.

Employee Separation and Recoupment

- In certain situations, an employer can “recoup” sick leave pay.
- If frontloading sick leave, an employer can recoup leave used more than what would have been accrued as of the date of an employee’s separation.
 - Example: Frontload 12 sick days at beginning of year (July 1), employee uses all 12 sick days and leaves employment on December 1.
- Employer can determine the amount that would have been accrued as of the date of separation and recoup the value used more than the employee’s adjusted leave balance.
- **Important caveats:**
 - Must have obtained prior written, voluntary agreement from the employee concerning the ability to deduct such wages (CBA provisions satisfy this requirement).
 - Deduction cannot reduce the employee’s final paycheck to less than minimum wage.



“Absence Control” Policies

- Many employers implement “absence control” policies, such as granting bonuses for perfect attendance, limited use of sick leave, etc.
- **Be careful in implementing such policies** with regard to ESTA, as the use of sick time taken under ESTA should not be considered an “absence” for purposes of these policies.
- Employers cannot “discriminate” against an employee for exercising their rights under ESTA (using earned sick time).
- LEO has interpreted this to mean that it is likely discriminatory to deny bonuses to employees if they have used sick leave pursuant to ESTA.



Employer Notice and Posting Requirements

- Employers must provide written notice to employees concerning certain ESTA information at the time of hiring. Such information includes, but is not limited to:
 - Amount of sick time required to be provided to an employee under ESTA.
 - Employer's choice of how a year is calculated.
 - The terms under which earned sick time may be used.
 - That retaliatory personnel actions taken by the employer against an employee for requesting or using sick time for which the employee is eligible is prohibited.
 - The employee's right to file a complaint with LEO for any violation of ESTA.
- Employers must display a poster in a conspicuous place accessible to employees that contains the above information.
- LEO has provided a template on its website for employers to use.

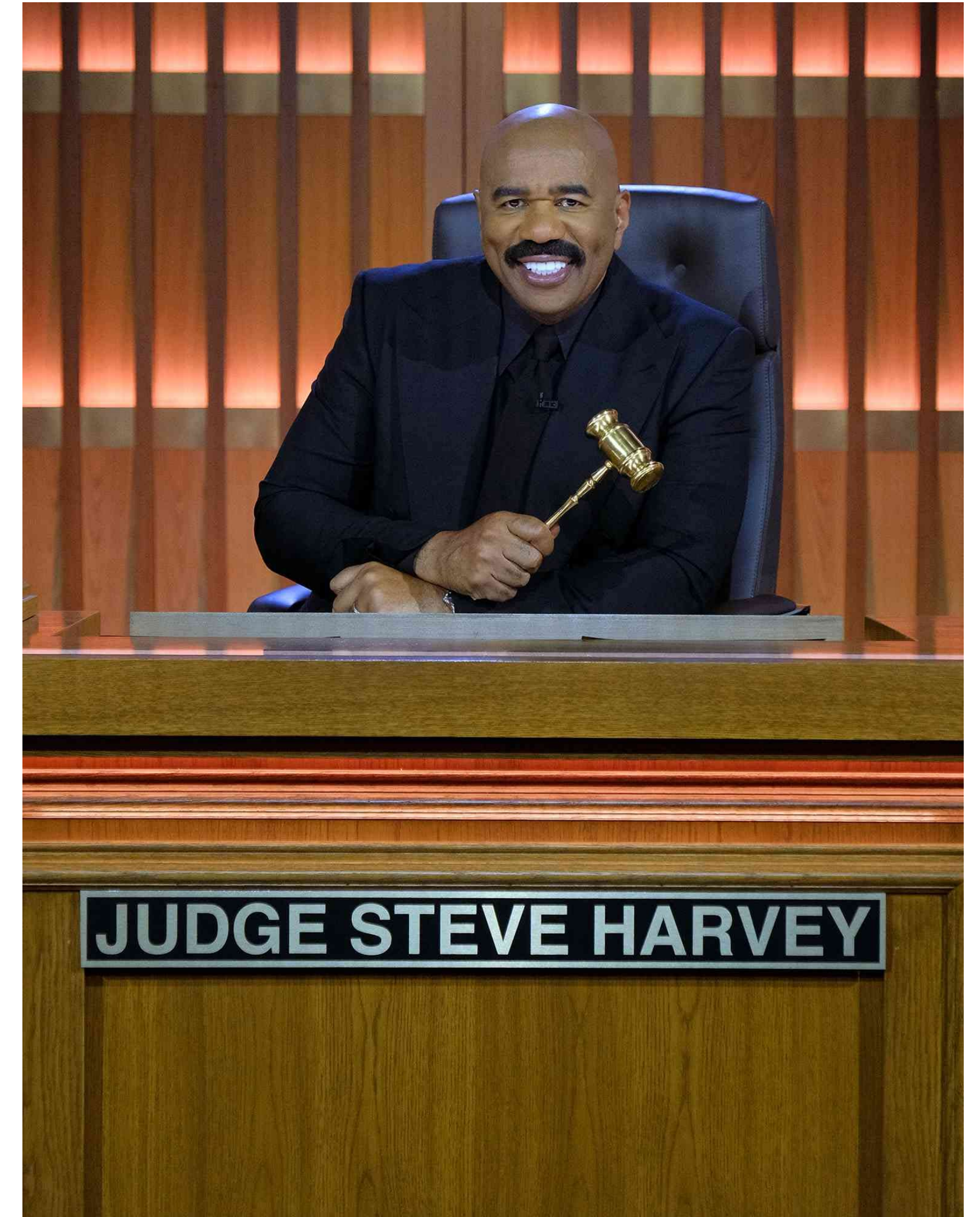
Potential Penalties



- Employees may file a claim with LEO within 3 years of the alleged violation, and LEO will investigate the claim.
- If a violation is found, LEO may impose penalties and grant the employee any and all damages incurred as a result (back pay, payment of improperly withheld sick leave, job reinstatement).
- Without voluntary compliance, LEO can bring a civil action on behalf of the complainant.
- Side Note: Employers are required to keep records of hours worked and earned sick time taken for at least 3 years.

Potential Penalties

- Additional penalties beyond potential civil liabilities.
- **Up to a \$1,000 civil fine** for each violation of an employer that takes retaliatory personnel action against an employee or former employee.
- If an employer fails to provide sick time to an employee in violation of ESTA, the employer is subject to a **civil fine of up to 8 times** the employee's normal hourly wage.
- **Up to a \$100 civil fine** for each violation if an employer willfully violates a notice or posting requirement.





Thank You!



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Legal Disclaimer

This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.