

ESTA Basics for Payroll



April 23rd, 2026

Austin W. Munroe



THRUN
LAW FIRM, P.C.

Caution

These slides reflect general legal standards for the related presentation and are not intended as legal advice for specific situations.

Future legal developments may affect these topics.

This document may not be reproduced or redistributed, in whole or in part, without the express written permission of Thrun Law Firm, P.C.

Earned Sick Time Act



How Did We Get Here?

- In 2018, voters petition to enact ESTA
- Legislature adopts ESTA as presented, but amends ESTA before it goes into effect (including by renaming ESTA the PMLA)
- Court: unconstitutional for Legislature to adopt voter-initiated law and amend it in the same legislative session
- Court: PMLA is void; ESTA goes into effect 2/21/25

Mothers Justice v AG, MI SC Case No. 165325



How Do They Compare?



Applicability

- **Paid Medical Leave Act**

("PMLA"):

- ER Applicability:
 - Most ERs with at least 50 EEs
- EE Definition:
 - Hourly EEs

- **Earned Sick Leave Act**

("ESTA"):

- ER Applicability:
 - All ERs
 - Special provision for "small businesses"
- EE Definition:
 - "individual engaged in service to an employer in the business of the employer"

“Service to the Employer”

- “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.”
- “Generally, publicly elected officials . . . are not considered employees for purposes of ESTA”

ESTA FAQs, updated July 11, 2025,
Michigan Department of Labor and Economic Opportunity

Economic Reality Test

The United States Department of Labor's Economic Realities Test employs seven (7) factors to determine if an individual is an employee:

1. Extent to which the services provided are integral to the business;
2. Permanency of the working relationship;
3. Who provides the facilities and tools;
4. Nature and degree of control of the worker;
5. The individual's opportunity to realize profits and suffer losses;
6. The amount of initiative, judgment, or foresight concerning the industry and corresponding market to be successful; and
7. The ability to operate independently, free from direction or authority.

See Opinion Letter FLSA 2019-6; Fact Sheet #13 (July 2008)

Who is *not* an employee?

According to HB 4002: “Employee” does *NOT* include any of the following:

- United States government Employee.
- A person subject to an employer policy if the policy (a) allows that person to schedule their own working hours, and (b) prohibits the employer from taking adverse personal action against the person if the person does not schedule a minimum amount of working hours.
- An unpaid trainee or unpaid intern.
- A person under 18 years of age employed pursuant to the Michigan Youth Employment Standards Act.

Leave Mandate

- **PMLA** – EE minimally accrues paid medical leave as follows:
 - 1 hour for every 35 hours worked, or
 - 40 hours at the beginning of ER's benefit year
- **ESTA** – EE minimally accrues 1 hour of earned sick time for every 30 hours worked

ESTA Leave Accrual



Accrued leave “shall carry over from year to year,” *but* ER not required to allow EE to use more than 72 hours of leave per year



Leave starts to accrue on 2/21/25 or when EE hired (whichever is later), *but* ER can require EE to wait 120 calendar days after starting employment before using leave



FLSA exempt EE assumed to work 40 hours per week (if EE workweek is less than 40 hours, use the lesser amount)

ESTA Leave Accrual Terms

- Year: “a regular and consecutive twelve-month period, as determined by an employer”
- Payment for unused leave not required upon employment separation
- If EE separates from employment and is rehired by the same ER within 2 months, ER must reinstate the EE’s previously accrued earned sick time and permit the EE to accrue additional earned sick time upon reinstatement

Leave Increments

- **PMLA**: 1-hour increments unless ER policy specifies otherwise
- **ESTA**: MCL 408.964(5) states that earned sick time may be used in 1-hour increments *or* the smallest increment the employer uses to account for other leave categories
- So, if the smallest increment an employer uses for any leave category is half a day, then the employer can require earned sick time to be used in half day increments.

Does ESTA Allow Leave Front-Loading?

Yes. The Earned Sick Time Act provides that an employer must grant an employee either **(a)** 1 hour of sick time for every 30 hours worked ("accrual method"), or **(b)** at least 72 hours or earned sick time at the beginning of the employer's ESTA benefit year ("frontloading method").

The employer retains the right to set the ESTA benefit year.



ESTA Frontloading

- An employer that elects the accrual method is not required to permit an employee to use 72 hours of earned sick time per ESTA benefit year
- Such an employer is, however, required to permit employees to carry over up to 72 hours of unused accrued earned sick time from ESTA benefit year to the next

ESTA Frontloading

An employer that elects the frontloading method is **not** required to:

- Permit an employee to carry over unused sick time from one ESTA benefit year to the next
- Pay the employee the value of unused sick time at the end of a year
- Calculate or track employee earned sick time accrual

ESTA Frontloading

The Act adds that frontloading employers may prorate the mandated 72 hours of earned sick time for a part-time employee if:

- The employer provides the employee with a written notice at the time of hire as to how many hours the employee is expected to work for the year.
- The amount of frontloaded earned sick time is at least proportional to the earned sick time the employee would accrue if the employee worked all those hours, and
- The employer provides the employee with additional earned sick time using the accrual method if the employee works more than those hours.

Let's Break It Down

1. Any paid leave can count toward ESTA leave mandate
2. Must provide paid leave in at least the same amounts as under ESTA (EE not entitled to use more than 72 hours per year)
3. Must allow paid leave to be used for the same purposes as under ESTA

Let's Continue Breaking It Down

4. Must allow paid leave to be used under the same conditions as under ESTA (e.g., following ESTA's documentation provisions)
5. Leave accrues at rate "equal to or greater than" 1 hour for every 30 hours worked

LEO FAQs: Front- Loading

Q: “If an employer chooses to limit use of accrued earned sick leave, may an employer provide the total amount of earned sick time all at once?”

A: “Employers limiting the use of earned sick time to 72 hours or more may provide the total amount of allowed hours at the beginning of the 12-month period (often referred to as ‘frontloading’). ***Because there is no limit on the amount an employee can accrue and carryover, employers should evaluate employee’s accruals at least annually to ensure that accrued hours are balanced to hours worked and carryover any balance.***”

Claw-back Language

“In the event that a [*Insert Position Title*] leaves employment with the District, for any reason, and has used more paid leave days, including sick days, than accumulated on a pro-rata basis, then the amount of paid leave days in excess may be deducted from the last paycheck [*Insert Position Title*] receives.”

Leave Categories

PMMLA (4) - ESTA (5)

1. EE's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of EE's mental or physical illness, injury, or health condition; or EE preventative medical care
2. Same as previous, but for EE family member's conditions
3. If EE or family member is a victim of domestic violence or sexual assault, for medical care or counseling for injury or disability; to obtain services from a victim service organization; to relocate; to obtain legal services; or to participate in legal proceedings

More Leave Categories

4. “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”
5. For closure of EE’s ~~primary workplace~~ *place of business* by order of a public official due to a public health emergency; for EE’s need to care for a child whose school or place of care is closed by order of a public official due to a public health emergency; or when it is determined by health authorities or by a health care provider that the EE’s or EE family member’s presence in the community would jeopardize the health of others because of exposure to a communicable disease

Who is a Family Member?

- Biological, adopted, or foster child, stepchild or legal ward, *a child of a domestic partner*, or a child to whom the EE stands in loco parentis
- Biological parent, foster parent, stepparent, or adoptive parent or legal guardian of an EE or EE's spouse or *domestic partner* or an individual who stood in loco parentis

More Family Members

- Individual to whom EE is legally married . . . or a **domestic partner**
- Grandparent
- Grandchild
- Biological, foster, or adopted sibling
- ***"An individual related by blood to the employee or whose close association with the employee is the equivalent of a family relationship"***
- **Domestic partner:** committed adult relationship

Leave Notice

- Foreseeable leave: ER **may require** notice of up to 7 days
- Unforeseeable leave: ER may require EE to give notice (a) "as soon as practicable" or (b) "in accordance with the employer's policy related to requesting or using sick time or leave" if both of the following are met:

Leave Notice

- On the employee's hire date, on February 21, 2025, or the employer's policy effective date—whichever is later—the employer provides the employee with a written policy that includes procedures for how the employee must provide notice, and
- The policy allows the employee to provide notice after the employee becomes aware of the need for earned sick time.

Leave Notice

An employer cannot deny leave for failure to comply with the employer's unforeseeable leave policy if the employer made a change to the policy and did not provide notice of the change to the employee within 5 days after the change.

Documentation

ESTA:

For leave "***of more than 3 consecutive days***, an employer may require ***reasonable documentation*** that the earned sick time has been used for a [ESTA purpose]"



This Photo by Unknown Author is licensed under [CCBY-SA-NC](https://creativecommons.org/licenses/by-sa/4.0/)

ESTA Documentation

- Upon ER request, EE must provide docs "**not more than 15 days after the employer's request.**"
- ER "shall not" delay leave "on the basis that the employer has not yet received documentation"
- If ER requires docs, ER "is responsible for paying **all out-of-pocket expenses** the employee incurs in obtaining the documentation"
- If EE 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"

“Reasonable Documentation”

- “Documentation signed by a health care professional indicating that **earned sick time** is necessary is reasonable documentation”
- Earned sick time: “time off from work . . . that can be used **for the purposes described in [ESTA]**”
- ER “shall not require that the documentation explain the nature of the illness or the details of the violence”
- Special provisions for domestic violence or sexual assault leave

Housekeeping



Record Retention

- 3 years, documenting hours worked, and ESTA leave used
- If ER fails to maintain such records or fails to allow LARA reasonable access to those records, there is a presumption that ER violated the ESTA



This Photo by Unknown Author is licensed under [CCBY](#)

ESTA Hire Notices



ER must provide written notice to each EE at time of hire, or by ~~2/21/25~~, or on the date the employer's policy takes effect (whichever is later) that explains:



Earned sick time required to be provided by ESTA,



How ER calculates ESTA year,



Earned sick time use terms,



ER retaliation is prohibited, and



EE right to file a lawsuit or LEO complaint for ESTA violations

ESTA Hire Notices (cont.)



Notice provided by ER "shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the ER's workforce, as long as [LEO] has translated the notice into such language"



LEO required to minimally create notice in English and Spanish

ESTA English Hire Notice

Complaint Filing

An employee affected by an alleged violation, at any time within 3 years after the alleged violation or the date when the employee knew of the alleged violation, whichever is later, may do any of the following:

(a) Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.

(b) File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.

Visit www.michigan.gov/wageclaim to file a claim with the Wage and Hour Division.

If a violation is found and the claim cannot be informally resolved, the Wage and Hour Division will issue a written determination that the employee or employer may appeal. If appealed, a hearing before an administrative law judge (ALJ) will be scheduled. The employer and employee are expected to attend the administrative hearing to provide evidence and give testimony regarding the claim. The ALJ may affirm, modify or reverse the department's determination.

Employee

An employee is 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.

Employer

Employer means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs one or more individuals, except that employer does not include the United States government.

Contact Information

This brochure is intended for general information only. It does not include all of the provisions of Public Act 338 of 2018, as amended.

For information on the laws administered by the Wage and Hour Division contact:

Department of Labor & Economic Opportunity Wage and Hour Division

Stevens T. Mason Building
530 W. Allegan St. Lansing, MI 48933
517-264-7800

Southeast Michigan
3026 W. Grand Blvd., Suite 9-450
Detroit, MI 48202

Mailing Address:
PO Box 30476
Lansing, MI 48909-7976

Overnight Mailing Address:
2407 N. Grand River
Lansing, MI 48906

Toll Free: 1-855-4MI-WAGE
(1-855-464-9243)

Website: www.michigan.gov/wagehour

An Overview of the Earned Sick Time Act Public Act 338 of 2018 (ESTA)



MICHIGAN DEPARTMENT OF
**LABOR & ECONOMIC
OPPORTUNITY**

Department of Labor & Economic
Opportunity
Wage and Hour Division
1-855-4MI-WAGE (1-855-464-9243)

www.michigan.gov/wagehour

ESTA Poster

- ER must display ESTA poster in conspicuous place in the workplace that is accessible to EEs that contains hire notice information
- Poster “should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer’s workforce, as long as [LEO] has translated the poster into such language”
- LEO required to minimally create poster in English and Spanish

ESTA English Poster



GRETCHEN WHITMER
GOVERNOR

Michigan Department of Labor & Economic Opportunity

Wage and Hour Division
PO Box 30476
Lansing, MI 48909-7976

REQUIRED POSTER



MICHIGAN DEPARTMENT OF
LABOR & ECONOMIC
OPPORTUNITY

SUSAN CORBIN
DIRECTOR

GENERAL REQUIREMENTS – EARNED SICK TIME ACT*

Your employer's 'year' for the purposes of the Earned Sick Time Act is: _____

Earned Sick Time Accrual

Number of Employees	Minimum Accrual	Minimum Paid Sick Time	Unpaid Sick Time
Less than 10 employees	1 hour for every 30 hours	40 hours in a year	32 hours (if more than 40 accrued)
10 or more employees	1 hour for every 30 hours	72 hours in a year	

- Earned sick time shall carry over from year to year, a business with less than 10 employees is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, employers with 10 or more employees are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.
- Earned sick time shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later.
- An employee may use accrued earned sick time as it is accrued.
- An employer is in compliance with the act if it provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) of Section 3 of the act. Paid leave includes, but is not limited to, paid vacation days, personal days, and paid time off.

Earned Sick Time Uses

An employer shall permit an employee to use the earned sick time accrued for any of the following:

- The employee's or the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.

Contracts

- **Non-CBA EEs:** ESTA applies 2/21/25
- **CBA EEs:** Not subject to ESTA *until* the CBA expires *if* the CBA “conflicts with” ESTA.

Considerations

- ESTA will affect more than just hourly EE CBAs
- Be careful to avoid expanding scope or application of ESTA in contracts
- If have a PMLA policy, update to an ESTA policy
- "If ESTA is in effect, each ESTA year the first 72 hours of any paid leave may be used for any ESTA purpose, with those 72 hours of leave being subject to the same conditions as provided in ESTA."



ESTA Interference & Enforcement



Prohibited Conduct

- ER prohibited from interfering with EE's ESTA rights
- "There is a rebuttable presumption of a violation . . . if an employer takes an adverse personnel action against a person within 90 days after that person does any of the following"



Rebuttable Presumption Triggers

- Files a LEO complaint alleging an ESTA violation
- Informs any person about an ER's alleged ESTA violation
- Cooperates in investigation or prosecution of an alleged ESTA violation
- Opposes any policy, practice, or act prohibited by ESTA
- ***"Informs any person of his or her rights under this act"***

Employee Recourse

Employee may:

- File a complaint with the Michigan Department of Labor and Economic Opportunity (LEO).

LEO may:

- Award "any and all damages incurred by the [EE] as the result of violation of this act, backpay, and reinstatement in the event of job loss"
- File lawsuit on behalf of EE and all similarly situated EEs

Questions?



THRUN

LAW FIRM, P.C.

www.ThrunLaw.com

@ThrunLaw