

STATE OF MICHIGAN ADOPTS PAID SICK LEAVE LAW

On September 5, 2018, the Michigan Legislature voted to approve the **Earned Sick Time Act** (the “Act”), the Midwest’s first statewide paid sick and safe time law.^[1] The Act requires employers to provide employees with earned sick time, up to 72 hours per year, for certain covered reasons, such as mental or physical illness or condition, medical diagnosis, treatment or preventative care, and personal time related to domestic violence or sexual assault. The Act was a citizen petition-initiated measure that the state legislature approved, which, according to the State Constitution, does not require the governor’s signature. Passage of the Act avoided having the issue on the November ballot and the possibility of the initiative passing by public vote. That fact has drawn suggestions that the legislature may amend the Act in the near future. The Act is scheduled to go into effect in March 2019.

ACT BASICS

The Act will apply to all private employers employing one or more individuals. Under the Act, employees will accrue a minimum of one hour of earned sick time for every 30 hours worked. All employees, full time or part time, would be entitled to use up to 72 hours in a year. However, whether that time is paid or unpaid depends on the size of the employer. Employees of employers with fewer than 10 employees may accrue up to a maximum of 40 hours of paid sick time and 32 hours of unpaid sick time each year unless the employer selects a higher limit. Employees of businesses with 10 or more employees may accrue up to 72 hours of paid sick time per year unless the employer selects a higher limit. Earned sick time would carry over from year to year, but the annual maximums still apply. An employer’s paid leave policies that provide leave in at least the same amounts required by the Act are sufficient to maintain compliance.

Employers must permit employees to use available earned sick time for the following reasons:

- The employee’s or the covered family member’s mental or physical illness, injury or health condition; medical diagnosis, care or treatment of the employee’s or covered family member’s mental or physical illness, injury or health condition; or preventative medical care for the employee or covered family member;
- Absences where the employee or covered family member is a victim of domestic violence or sexual assault; and
- Meetings at the employee’s 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.

THE ACT’S ADMINISTRATIVE FEATURES

The Act imposes additional administrative requirements, many that resemble other paid sick leave laws or intermittent leave under the FMLA. Some of the Act’s key administrative features include:

- Employers may choose how to calculate a “year” under the Act using any consecutive, 12-month period.
- Employees may use earned sick time in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for other absences.
- While an employer may require up to 7-days’ notice for foreseeable leave, notice for an employee’s unforeseeable leave need only occur “as soon as practicable.”
- Reasonable documentation may be required for earned sick time of more than 3 consecutive days, and such documentation is limited to a statement that the time is necessary. It should not include a description of the illness or details of violence.
- If requiring documentation, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. Furthermore, an employer may not delay commencement of the leave based on a failure to receive documentation. Employers cannot require disclosure of the details related to the employee or family member’s health condition.
- Employers may not retaliate against an employee for engaging in activity protected by the Act. Importantly, the Act recognizes a rebuttable presumption of a violation of the Act if an employer takes an adverse action against an employee within 90 days of, among

other actions, opposing any employer action that is prohibited under the Act.

- Employers must provide written notice of an employee's rights under the Act, including the amount of leave provided under the Act, the employer's choice of how to calculate a "year," the terms under which leave may be used, the prohibition of retaliatory action against an employee for requesting or using leave and the employee's right to bring a civil action or file a complaint with the Department of Licensing & Regulatory Affairs for any violation.

The Act will become effective in March 2019. If an employer has employees covered by a collective bargaining agreement ("CBA"), the Act would apply on the date that the CBA expires, regardless of any statement that the CBA will continue in full force until a future date or event.

As previously stated, if the legislature had not approved the initiative, the Act would have gone to the state ballot on November 6, 2018. Had the issues gone to the ballot and subsequently been approved by voters, employers would have been left scrambling to adjust operations because the laws would have taken effect 10 days after the date of the official declaration of the vote. Conversely, employers now have an increased lead time to review and revise their leave policies and procedures before the anticipated March 2019 effective date.

PRACTICAL TAKEAWAYS

- The combined effect of the Act's provisions is that most employees will have 72 hours of paid time off per year that they can use sporadically without any practical restriction.
- Employers should use the increased lead time of the new requirements to review and revise their leave policies and procedures to ensure compliance with the Act. Concurrently, employers with multi-state or nationwide operations should pay special attention to how this new Michigan law may affect their leave policies and procedures in light of a patchwork of other states' paid sick and safe time laws.
- Employers should stay tuned for proposed and/or adopted amendments during the remainder of the current legislative session or in the next term.

If you have any questions, or would like additional information about this topic, please contact:

- **Bruce Bagdady** at (248) 457-7839 or bbagdady@hallrender.com;
- **Jon Rabin** at (248) 457-7835 or jrabin@hallrender.com;
- **Larry Jensen** at (248) 457-7850 or ljensen@hallrender.com;
- **Bradley Taormina** at (248) 457-7895 or btaormina@hallrender.com;
- **Matthew Paradiso** at (248) 457-7844 or mparadiso@hallrender.com; or
- Your regular Hall Render attorney.

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[1] On September 5, 2018, the Michigan legislature also voted and approved a progressive increase to the state's minimum wage over the next several years, titled the Improved Workforce Opportunity Wage Act.