

Complaint Filing

An employee affected by an alleged violation, at any time within 3 years after the alleged violation may do any of the following:

(a) File a claim with the department, which shall investigate the claim.

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, Unpaid trainees or unpaid interns, Individuals employed in accordance with the Youth Employee Standards Act 1978 PA 90, and an individual who works in accordance with a policy of an employer if both of the following conditions are met:

- The policy allows the individual to schedule the individual's own working hours and;
- The policy prohibits the employer from taking adverse personnel action against the individual if the individual does not schedule a minimum number of working hours.

Employer

Employer means any person, firm, business, educational institution, 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
517-284-7800

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

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Earned Sick Time Accrual Amount

Earned Sick Time accrual:

- Using the accrual method employees shall accrue a minimum of 1 hour of earned sick time for every 30 hours worked. Or employers may frontload 72 hours, or 40 hours for small businesses.
- An employer with 10 or less employees; an employee shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit.
- An employer with 11 or more employees; an employee shall not be entitled to use more than 72 hours paid earned sick time per year unless the employer selects a higher limit.
- When using the accrual method 1 hour per 30 hours worked, up to 72 hours or 40 hours for small employers shall be allowed to carry over from year to year.
- An employer is in compliance with this act if the employer 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 this act. Paid leave includes but is not limited to paid vacation days, personal days, and paid time off.

Earned Sick Time Hours

- Earned sick time must be used in 1-hour increments unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document.
- Employers using the accrual method of calculating ESTA may 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. Employers frontloading are not required to allow carryover or payout of unused earned sick time.
- The employer may pay out at termination or separation in lieu of reinstating previously accrued earned sick time if reemployed within 2 months of separation or other separation from employment.
- An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly or base wage for that employee or the minimum wage established under the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended. 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.
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Earned Sick Time May Be Used For

- 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 eligible employee's mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.
- 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.
- For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease.

Exercise of Rights

- An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.
- An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. "Retaliatory personnel action" means any of the following:
 - Denial of any right guaranteed under this act.
 - A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.
 - Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.
 - Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.
- An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.