

Earned Sick Time Act: Frequently Asked Questions (FAQ)

NOTE: This is not legal advice and is subject to change at any time.

1. What employers are covered by the act?

- All Michigan employers that have one or more employee(s), including any person, firm, business, educational institutions, corporations, limited liability company, governments entities., excluding the United States Government.
- Delayed effective date for 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.
 - Example: Jordan started a small business in October 2024, he employes 2 employees. His employees would begin to accrue earned sick time October of 2027.
- Exclusion based on Federal Law:
 - Railway workers and employers covered by the Railroad Unemployment Insurance Act (RUIA) are preempted from coverage under the Earned Sick Time Act.

2. What employees are eligible to receive earned sick time?

- 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.

3. What employees are exempt from the Act?

- Those employed by the U.S. 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.
 - On-call, flexible scheduling, per diem employees, and similar are not covered by this exemption if the employer controls the schedule.
 - Example. An employer permits its employees to select periods of work from a posted schedule. Assuming circumstances justifying the use of earned paid sick time, on-call, flexible scheduled, per diem, etc., Employee may use available earned paid sick time for all or any portion of the work hours that Employee selects and is assigned.
- Generally, publicly elected officials, members of publicly appointed boards and commissions, and similar public office holders are not considered employees for purposes of ESTA, even if paid or receiving some form of compensation, unless the governing entity treats these individuals as employees.

4. How does the ESTA apply to work performed outside the state of Michigan, or to employers located outside the state of Michigan?

- The ESTA applies to work performed by employees who are physically located in Michigan, regardless of the employer location.
 - Kyle works remotely for an employer based in Chicago, he lives in Michigan and works out of his home office. Kyle would be entitled to the accrual and use of ESTA.
 - Kyle works in Michigan, the employer sends Kyle to Ohio. Kyle does not accrue hours while working in Ohio and the employer is not required to allow Kyle to use accrued ESTA while working in Ohio. However, this is not a break in employment.

5. How to determine if an employer is a “small business” under the ESTA?

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

- Owners that are employees of the employing entity are included for purposes of calculating the number of employees. Owners that are not considered employees of the employing entity are not included. Owner(s) that are employees may be exempted from benefits if meeting the employee exemptions.
- 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.
- Once an employer employs 11 or more employees for 20 or more workweeks in the current or prior calendar year, the employer cannot be a “small business” again until it meets the requirements above.
 - Marie is a local restaurant owner. She employs 8 individuals from January 2025 through March 2025, then employs 12 individuals for any 20 weeks from April 2025 through Sept. 2025. Due to staff leaving for school, her staff size is reduced to 8 employees again starting in Oct. 2025 and continuing indefinitely. Marie’s restaurant was a small business from January 2025 until it reached the 20-workweek threshold. Once they reached the 20 or more workweeks with 11 or more employees' threshold, the restaurant will not be a small business for the remainder of 2025 and all of 2026. Starting in January 2027, Marie’s Restaurant can again be considered a small business.

6. When does an eligible employee begin to accrue earned sick time?

- For a small business, October 1, 2025, or upon commencement of the employee’s employment, whichever is later.
- For all other employers, accrual begins on February 21, 2025, or upon commencement of the employee's employment, whichever is later.

7. If an employer is not frontloading leave (see ”frontloading”), what is the accrual for hourly and salaried employees?

- Hourly Employees:
 - Small business employers:
 - Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but, shall not be entitled to use

more than 40 hours of paid earned sick time in a calendar year unless the employer selects a higher limit.

- Merri works for a small business; she works 40 hours per week. By the end of the year, she may accrue up to 69 hours of Paid Earned Sick Time, but the employer may limit Merri to only using 40 hours unless the employer selects a higher limit.
- All other employers:
 - All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.
 - Ryan is an hourly employee that works 50 hours a week; his employer limits employee use to 72 hours. By the end of the year, he would accrue 86 hours of Earned Sick Time.
- Salaried employees:
 - For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.
 - Sue is a part-time employee salaried at 15 hours per week. By the end of the year she would accrue 26 hours of Earned Sick Time.
 - Andrea is a salaried employee at 40 hours per week. By the end of the year she would accrue 69 hours of Earned Sick Time. If at a small business, Andrea could be limited to using 40 hours, at any other business Andrea could use all accrued hours.
- Special rules for airline flight crew employees:
 - An employee who is covered under 29 CFR 825.801 is assumed to have worked not less than 40 hours in each workweek or is assumed to have worked not less than 30 hours if employed by a small business.

8. Can an employer frontload full time employees and use the accrual method for part time employees?

- Yes, the employer can use both methods for different classification of employees.

9. What effect does the ESTA have on collective bargaining agreements on or after February 21, 2025?

- If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the stated expiration date in the collective bargaining agreement.
 - The collective bargaining agreement includes terms regarding sick time or sick leave benefits: Provided that the collective bargaining agreement includes terms related to sick leave, sick time, PTO with uses for sick time, or a similar benefit, the collective bargaining agreement terms apply, even if the benefit is less than what is required by the ESTA, until the agreement expires or is renewed, extended, or otherwise renegotiated. The agreement also applies in situations where the agreement expressly excludes sick leave benefits.
 - Armando's works for an employer that is covered under a collective bargaining agreement. This agreement was signed November 2024 and includes 40 hours of sick time to covered employees. This agreement offers a benefit that conflicts with ESTA. The act would apply upon expiration of their collective bargaining agreement.
 - The collective bargaining agreement is silent as it relates to sick time or sick leave benefits: Employees covered by a collective bargaining agreement that is completely silent on sick leave, either for the entire unit or for specific classifications covered by the agreement, are covered by the ESTA and begin accruing benefits on February 21, 2025, unless they are a small employer as outlined above.
 - Nick works for an employer that has signed a collective bargaining agreement. The agreement expires June 2026 and does not include sick time benefits. On February 21, 2025, Nick would be entitled to ESTA.

10. What is a benefit year?

- A benefit year is a regular and consecutive twelve-month period determined by the employer that is used to calculate an eligible employee's benefits.

11. Can an employer allow more than 40 or 72 hours of earned sick time to be accrued and used?

- Yes, employers may allow employees to use more than 72 hours of earned sick leave, or 40 for a small business, in the 12-month period. Employers are permitted by the ESTA to limit the use of earned sick time to 72 hours, or 40 for a small business, per 12-month period.

12. Frontloading: May an employer provide the total amount of earned sick time all at once?

- Yes. Frontloading is considered an alternative to the accrual method outlined above. If frontloading, the hours must be available for immediate use.
- For full-time employees (e.g., normally 40 hours or more per week), an employer may frontload at least 72 hours, or 40 for a small business, of earned sick time at the beginning of the benefit year or on the date that the individual is hired during the benefit year on a prorated basis.
- For part-time employees (e.g., normally working less than 40 hours per week), an employer may frontload less than 40 hours for a small business and less than 72 hours for other employers If ([MCL 408.963](#)):
 - The employer provides the part-time employee with a written notice of how many hours the part-time employee is expected to work for a year at the time of hire;
 - The amount of earned sick time provided to the part-time employee at the beginning of the year is, at a minimum, proportional to the earned sick time that the part-time employee would accrue if the part-time employee worked all of the hours expected as provided in the written notice; and
 - If the part-time employee works more hours than what is expected as provided in the written notice, the employer must provide the part-time

employee with additional earned sick time in accordance with the accrual requirements (e.g., 1 hour for every 30 hours worked).

- If an employer adopts this practice, it does not require employees be allowed carry over of unused sick time to the next benefit year, calculate and track employee's accrual or, pay the value of employee's unused sick time.

13. Can an employee carry over unused earned sick time from one benefit year to the next?

- Yes, if the employer is using the accrual method, 1 hour per 30 hours worked, then the employees shall be allowed to carry over up to 40 hours, for small business and 72 hours for other employers.
 - Employers using this method must calculate and track employee accruals.

14. Does an employee lose accrued hours if laid off, terminated, or transferred to another location?

- Employees separated from employment for 2 months or less maintain all accrued earned sick time prior to the separation, begin accruing additional hours upon reemployment, and may use any accrued hours unless paid out at separation (see question on payout).
- Employees transferred to another classification or location with the same employer maintain all accrued hours and continue accruing hours unless paid out at separation (see question on payout).
- Employees separated from employment with the same employer for more than 2 months lose all accrued, unused earned sick time, unless the employer's policy allows these hours to be maintained.

15. When is earned sick time available for use by an eligible employee?

- Except for small businesses, employees employed on February 21, 2025, begin accrual and may use accrued hours immediately. A frontloading employer may prorate the 2025 period to align with the employer established 12-month period.
 - Example: The employer intends to use the calendar year for purposes of ESTA, the employer may frontload based on the period from February 21, 2025 through the end of 2025. Formula: Feb 21 to Dec 31 equals 314/365 days, or 86%. An employer could frontload 62 hours for 2025. Small employers are not obligated to begin until October 1, 2025.

- Michelle's employer frontloads 80 hours of PTO time on January 1. They allow their employees to use their PTO time for sick, vacation and personal. Michelle used 40 hours of time in January. Michelle's employer on February 21st increased her bank to 62 hours meet ESTA requirements for prorated year.
- Larry works for the same employer as Michelle, he did not use PTO time between January 1st and February 21st. His PTO bank remains at 80 hours. Larry's bank meets the frontloading requirement for a prorated year.
- If using the accrual method for calculating earned sick time, an employer may require a new employee, hired on or after February 21, 2025, to wait until the 120th calendar day after commencing employment before using accrued earned sick time.
- As an alternative to tracking accruals, if an employer is frontloading earned sick time benefits, the 120-calendar day provision does not apply.
- Employees reemployed within the 2-month period are considered to have continued employment for purposes of ESTA and the remainder of the 120-calendar day waiting period, if applicable, (unless paid out under FAQ 12).
- If using the accrual method, an employee may use earned sick time as it is accrued regardless of the pay period. Once 30 hours have been worked, an employee is entitled to use one hour of earned sick time for use under ESTA.
- Employees may use ESTA for scheduled work hours.
 - Employers may require on-call employees' use of ESTA for periods of time in which the on-call employee is scheduled to work, or periods of time that the on-call employee would be scheduled to work but for circumstances justifying the use of earned paid sick time.
 - Rose is an on-call Employee, she is scheduled to work for five consecutive days. Assuming circumstances justifying the use of earned paid sick time, Rose may use available earned paid sick time for all or a portion of the scheduled five-day period.
 - Jacob receives a call from his employer to work the same day and the following day. Assuming circumstances justifying the use of earned paid sick time, Jacob may use available earned paid sick time for all or any portion of the two days.

- Elizabeth's employer permits their employees to select periods of work from a posted schedule. Assuming circumstances justifying the use of earned paid sick time, on-call Elizabeth may use available earned paid sick time for all or any portion of the work hours that she selects and is assigned.

16. Does earned sick time have to be taken in 1-hour increments?

- No, the employer may allow 1-hour increments or the smallest increment that the employer uses to account for absences or use of other time.

17. What reasons can an eligible employee use earned sick time?

- An employer shall permit an employee to use the accrued earned sick time 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 or the employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for the employee or the employee's family member.
- If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the 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; 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, regardless of whether the employee or family member has actually contracted the communicable disease.

- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

18. Who is considered a family member?

- Family members include:
- 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.
- Biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.
- Grandparent.
- Grandchild.
- Biological, foster, or adopted sibling.
- Any other individual related by blood.
- "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships.
- "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.

19. Do employers have to create a separate "bank" of time for earned sick leave, or can employers use existing paid time off policies?

- No. An employer's paid time policy may be used so long as it provides at least the same benefits as provided in the ESTA, and may be used for the same purposes, under the same conditions, and accrued at a rate equal to or greater than the rate described in the ESTA.

20. If my employer created a combined bank of time that includes PTO, Vacation and Sick. Am I entitled to more sick time if I used all my time on vacation?

- No, if the employer has provided you with time to use as PTO, Vacation or sick, and they have met the accrual minimums for ESTA, you are not entitled to more time

21. What is the required wage rate for earned sick time?

- Earned sick time must be paid at a pay rate equal to the greater of either (i) an employee's normal hourly wage or base wage, or (ii) the Michigan minimum wage rate then in effect under MCL 408.934 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.

22. Does accrued, unused earned sick time need to be paid upon termination of employment?

- No. Employees do not need to be paid for unused accrued earned sick time at separation under the ESTA. However, Public Act 390 of 1978, the Payment of Wages and Fringe Benefit Act, may require payment upon termination pursuant to the employer's written policy or contract.

23. May an employer pay out unused sick leave annually in lieu of carrying over unused hours to the next year, or at termination without providing the hours at reemployment?

- 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.

24. If an employer “frontloads” sick leave, can an employer recoup leave used more than what would have been accrued as of the date of separation?

- Yes. An employer may determine the amount that would have been accrued as of the date of separation and recoup the value of leave used more than the employee's adjusted leave balance, provided that this deduction does not reduce the final paycheck to less than minimum wage and the employer obtained a prior written, voluntary agreement for the deduction.

25. May an employer require an employee to provide notice of use of earned sick time?

- 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. Notification as soon as practical for unforeseeable leave is also included in the Family Medical and Leave Act (FMLA). For consistency, the consideration under ESTA would be similar; or

- 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 that includes 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.
- 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.
- Ben's employer typically requires its employees to provide at least 24 hours advance notice of any absence per written policy. Two hours before Ben's shift, his child develops stomach pains and Ben needs to take her to the doctor. Under these circumstances, Ben does not need to comply with his employer's 24-hour advance notice policy; rather, he should provide notice as soon as practicable of his ESTA use.
- Joe's employer has a written policy requiring seven days advance notice from its employees for sick and safe time use when the absence is foreseeable. Joe schedules a preventative care check-up for his daughter several months in advance of the check-up but forgets to inform his employer until two days before the appointment. Under these circumstances, the employer may deny Joe's use of ESTA for the appointment as its written policy meets ESTA requirements and the ESTA use was foreseeable.

26. May an employer require documentation for the use of earned sick time?

- For earned sick leave of more than three consecutive days, an employer may require reasonable documentation that the earned sick leave has been used for a permissible purpose. 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.

27. 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 subject to discipline for not following the employer's notification policy and procedures if:
 - If the employee's need for the earned sick time is not foreseeable, an employer, may require the employee to give notice of the intention in either of the following manners:
 - (a) As soon as practicable.
 - (b) In accordance with the employer's policy related to requesting or using sick time or leave if both of the following are met:
 - (i) On the date of the employee's hire, on the effective date of the 2025 amendatory act that added this subparagraph, or on the date that the employer's policy takes effect, whichever is latest, the employer provides the employee with a written copy of the policy that includes procedures for how the employee must provide notice.
 - (ii) The employer's notice requirement allows the employee to provide notice after the employee is aware of the need for the earned sick time.
- An employer that requires notice for sick time that is not foreseeable under subsection (3)(b) shall not deny an employee's use of earned sick time that is not foreseeable if either of the following conditions applies:
 - (a) The employer did not provide a written policy to the employee as required under subsection (b)(i).

- (b) The employer made a change to the written policy and did not provide notice of the change to the employee within 5 days after the change.

28. May an employer ask questions regarding the need for using earned sick leave?

- When using leave under ESTA, employees should provide sufficient information for the employer to determine whether the leave meets the eligible uses under the 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.

29. Can the employer make an employee use their sick leave before using other types leave?

- No, an employee must request the use of Earned Sick Time.

30. How does the ESTA interact with FMLA?

- Like other leave benefits, the ESTA may run concurrently with FMLA approved leave provided that the leave meets the requirements of FMLA. However, if ESTA leave is being used, requirements on advance notice, unforeseeable leave, documentation requirements, will be applied under the ESTA provisions.
- Once ESTA leave is exhausted or not being used for a FMLA or other covered leave, the FMLA or other leave provisions apply.

31. Does the employer have a duty to maintain the confidentiality of the information provided by the employee?

- Yes. Employers must maintain the confidentiality of health, domestic violence, and sexual assault information about an employee or his or her family member and cannot disclose the information to others without the employee's permission.

32. What recourse does an employer have for an employee failing to follow established notice and documentation policies?

- Employers should consult with an attorney for guidance concerning the creation of notice and documentation requirements.
- 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.

33. What are employer recordkeeping requirements under the ESTA?

- Employers must retain records that document the hours worked and earned sick time taken by employees for not less than three years. These records shall be available to the Wage and Hour Division with appropriate notice and at a mutually agreeable time.

34. Does the Earned Sick Time Act contain a notice or posting requirement?

- Yes, employers must provide written notice of an employee's rights under the ESTA at the time of hiring or on March 23, 2025, whichever is later. The notice requires specific information which can be found in the statute at www.michigan.gov/wagehour.
- Employers are also required to display a poster at the place of business containing specific rights listed in the ESTA. The Department shall create the poster and can also be found at www.michigan.gov/wagehour.

35. What remedy is available to employees or others who believe an employer has violated the act?

- A claim may be filed with the Wage and Hour Division within 3 years of the alleged violation date. An investigation will be completed, and mediation attempted, if appropriate. If a violation is found, the Department may award all appropriate relief including but not limited to payment of all earned sick time improperly withheld, all damages incurred by the complainant as a result of violation of this act, back pay, and reinstatement in the case of job loss.

36. What penalties are imposed against an employer for violating the act?

- In addition to the civil remedies afforded to affected employees, an employer who fails to provide earned sick time is subject to a \$1,000 administrative fine, and

potentially and additional civil fine up to 8 times the employee's normal hourly wage.

- An employer who willingly violates the posting requirement is subject to a \$100 administrative fine for each separate violation.

37. How do I file a claim for violations of the Earned Sick Time Act?

- Claims may be filed online at www.michigan.gov/wageclaim, in-person at a Wage and Hour Division office (see website for locations); or a form may be requested by calling 855-464-9243 (4MI-WAGE). Claim forms are available in English, Spanish, and Arabic.

38. What if I have additional questions?

- Please visit www.michigan.gov/wagehour

Revised 03/07/2025