



Michigan Paid Sick Leave and Minimum Wage Laws: Last-Minute Amendments Led to These Major Changes

Insights

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Michigan employers received some good news on the wage and hour front when the state legislature passed amendments to the new paid sick leave and minimum wage laws at the 11th hour. Although employers did not get complete relief from the two laws, the legislative compromises will ease some of the burdens on employers. While some aspects took effect on February 21 as planned, others have been delayed or changed. We'll give you some quick background on how we got here and identify the major changes from the two amendments.

Quick Background

As we previously discussed [here](#), a 2024 Michigan Supreme Court decision reinstated 2018 voter-initiated versions of the state's minimum wage and paid sick leave laws, which were set to take effect on February 21. The relevant laws are the Earned Sick Time Act (ESTA) and the Improved Workforce Opportunity Wage Act (IWOWA). As previously [reported](#), the Michigan legislature had competing bills on amendments to both laws in both chambers.

Minimum Wage Changes

The final version of [Senate Bill 8](#) passed earlier last week, and Governor Whitmer signed it into law on February 21. Notable changes included:

- accelerating the rise to a \$15 minimum wage;
- slowly increasing the tipped minimum hourly wage from its current 38% to 50% by January 1, 2031 (rather than eliminating the tip credit altogether); and
- adding a possible \$2,500 fine for violating the tipped minimum hourly wage provisions.

The following chart summarizes the first two major changes:

Date	Minimum Wage	Tipped Wage as a Percentage of the Minimum Wage
February 21, 2025	\$12.48	\$4.74 (38%)
January 1, 2026	\$13.73	\$5.49 (40%)
January 1, 2027	\$15.00	\$6.20 (41.33%)

January 1, 2021	\$ 10.00	\$0.00 (42 / 0)
January 1, 2028	Inflation-adjusted	44%
January 1, 2029	Inflation-adjusted	46%
January 1, 2030	Inflation-adjusted	48%
January 1, 2031	Inflation-adjusted	50%

Major ESTA Changes

House Bill 4002, which was also signed into law on February 21, contains a number of notable changes from the original version of ESTA. Here are some of the bigger changes:

- **Waiting Period:** Anyone hired after February 21 can be required to wait **120 calendar days** (was 90 days) to use accrued earned sick time. *Please note that the Department of Labor and Economic Opportunity has taken the position that only accrual employers (not frontload employers) may require a waiting period.*
- **Small Business:** An employer with 10 (was 9) or fewer paid workers during a given week is subject to certain lower requirements under ESTA. Notably, small businesses need only to allow employees to use up to 40 hours of paid sick time in a given year. (This was originally 40 hours paid and 32 hours unpaid.)
- **Small Business Effective Date:** Small businesses have until October 1 to start complying with ESTA. As such, there is no requirement yet for small businesses to allow accrual of earned sick time, provide paid sick time (aka-frontload), or calculate and track accrual of paid earned sick time.
- **Covered Employee:** A covered employee under ESTA is still anyone engaged in service to an employer in the business of an employer, but now excludes (in addition to U.S. government employees) any statutorily defined “unpaid trainee or unpaid intern,” employees subject to the Youth Employment Standards Act, as well as any individual who works in accordance with an employer policy if two conditions are met:
 1. the policy allows individuals to schedule their own working hours; and
 2. 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.

The “unpaid trainee or unpaid intern” statutory definition has six requirements that largely track the U.S. Department of Labor’s guidance.

- **Yearly Carryover Cap:** Employers can now cap carryover of accrued paid sick time at 72 hours from year to year (40 hours for small businesses).
- **Pay Rate:** The given pay rate for earned sick time is now the greater of the employee’s base wage (or hourly wage) or the minimum wage under IWOWA. Further, employers explicitly now do not

have to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece rate pay, tips, or gratuities in calculating the base/hourly wage for ESTA-covered time.

- **Unforeseeable Request Timing:** While employers still can only require seven days advance notice for foreseeable uses of ESTA-covered time, employers now have two options for notice of unforeseeable uses of ESTA-covered time:
 1. as soon as practicable; or
 2. “in accordance with the employer’s policy related to requesting or using sick time or leave.” The latter has two requirements of its own:
 - the employer provides a written copy of the policy containing the 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 the earned sick time.” Practically speaking though, an employer going the policy route for unforeseeable leave must provide written notice of the change to employees (by sending out a new copy of the policy) within five days after the change, or else they cannot rely on the policy to deny unforeseeable earned sick time if the employee violates the employer’s notice procedures.
- **Earned Sick Time Increments:** Employers now have the **choice** of using one-hour increments or the smallest increment the employer’s payroll system uses for other absences. Practically speaking, this means non-FMLA employers may be able to require employees to use increments of two or more hours of leave at a time.
- **Document Request:** When ESTA allows an employer to request supporting documentation for ESTA-covered time usage, the employer can demand the documents be provided within 15 days of the employer’s request.
- **Rehire Provision:** As a reminder, the rehire provision for ESTA required employers to reinstate previously accrued but unused earned sick time and allow immediate use of such time (so, no waiting period). Two changes were made to this provision: (1) the rehire provision only applies if the employee is rehired within two months (was six months); and (2) the rehire provision does not apply if an employer pays out accrued but unused earned sick time at the time of separation.
 - **Note:** There are similar transfer and successor provisions under ESTA and employers can avoid them by paying out employees accrued but unused sick time at the time of transfer or of a succession (as applicable).
- **Prorating is Explicitly Allowed:** Employers that provide 72 hours (40 hours for small businesses) of earned sick time for immediate use at the beginning of the benefit year do not have to: (1) allow carry over of unused time; (2) calculate and track employees accrual of paid earned sick time; or (3) pay out unused accrued paid earned sick time at the end of the year in which it was accrued.

- **Pro-Rating Frontloaded Leave for Part-Time Employees:** ESTA now allows an employer to essentially prorate the frontloaded 72 hours for part-time employees, but the administrative burden may be too onerous for some employers. In order to prorate less than 72 hours of paid sick time at the beginning of the benefit year, the employer must “at the time of hire” provide written notice to the employee of the expected number of hours worked for a year. Based on that written notice expectation, the employer must then provide a proportion of paid leave in line with those hours that meets the minimum accrual standard (one hour of leave per 30 hours worked) under ESTA. In other words, the employer takes the total number of expected work hours for the year and divides by 30 to get the minimum permissible amount of prorated earned sick time. Finally, the employer must evaluate if the employee worked more than expected at the end of the year and, if so, adjust the next year’s allotment of earned sick time to align with the prior year’s hours worked.
- **PTO Compliance:** An employer can still rely on a PTO policy to comply with ESTA as long as the PTO policy provides at least 72 hours of time off for ESTA-covered reasons.
- **No more right to file a private right of action:** Employees can now only file an administrative complaint with the Department of Labor and Economic Opportunity (LEO).
- **New Civil Fine for Failing to Provide Earned Sick Time to an Employee:** Up to eight times the employee’s normal hourly wage can now be levied on the employer as a fine in addition to other employer fines and remedies available to employees.
- **Notice Requirement:** Employers previously had until February 21 to provide written notice of certain items to current employees and then upon hire for all new employees thereafter. Now because of the late amendment, employers have until March 23 to provide employees with notice of all of the following:
 1. the amount of sick time that must be provided to an employee under ESTA;
 2. the employer’s chosen benefit year (for example, anniversary, calendar, fiscal, etc.);
 3. the terms under which earned sick time may be used;
 4. that retaliation against eligible employees is prohibited for requesting or using earned sick time; and
 5. the employee’s right to file a complaint with LEO for any violation of ESTA.
- **Adverse Action Allowed:** Employers can take disciplinary action if the employee uses earned sick time for a purpose other than one covered by ESTA, or violates the notice requirements under ESTA.
- **Rebuttable Presumption Gone:** The latest changes eliminated the rebuttable presumption of an ESTA violation if an employer took an adverse personnel action within 90 days of exercising a right provided by ESTA. As such, employees will have the burden of proving any violation of ESTA.
- **Still No Replacement Requirements Allowed:** Employers still cannot require an employee to find a replacement as a condition of using ESTA-covered leave.

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- **Collective Bargaining Agreements:** If a CBA is in effect on February 21 and it conflicts with ESTA, then ESTA does not apply to the employees subject to that agreement until the stated expiration of the agreement.

There are also special provisions for airline flight crew accruals, employers who are parties to multiemployer collective bargaining agreements, and small businesses formed after February 22, 2022(which are exempt from ESTA for three years after they first employed anyone).In addition, employees who are subject to contracts providing terms of three years or shorter and signed before December 31, 2024, are not subject to ESTA until such contract expires.

What Should Employers Do Now?

- Review the changes that impact your organization and update your compliance strategy accordingly.
- Contact legal counsel as soon as possible to align your policies with the latest amended version of ESTA.
- Be sure to budget for the accelerated increase to the \$15 minimum wage.
- Train your HR, payroll, and other key staff on how to comply and how to account for all recent changes.
- Sign up for [Fisher Phillips' Insight System](#) to get updates delivered to your inbox.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our Detroit office](#), or any attorney in our [Wage and Hour Practice Group](#).

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