



Statewide District Meeting

August 2025

Answers to Your Questions:

Michigan Earned Sick Time Act

Disclaimer: This is meant to be information-only and does not constitute legal advice regarding any specific matter or situation. Legal information is not the same as legal advice, which is the application of law to an individual's specific matter, situation, or circumstances. Legal advice may be given only on the basis of specific facts relayed by a client to an attorney. The MAC goes to great lengths to make sure our information is as accurate, useful, and up to date as possible. We recommend, however, that you consult an attorney if you want or need professional assurance that our information, and your interpretation of it, applies to your specific legal situation. Also, this information is subject to change at any time as additional information becomes available.

The MAC made the best possible effort to answer your questions in the chat. We apologize for not being able to answer them all during the meeting itself, but as you saw, this is a somewhat complex topic with almost unlimited variables based on each individual clinic's employment policies and/or circumstances. Should you find that your question is not answered here, contact MAC Assistant Director Tim Gaughan at tim@chiromi.com.

TOPICS COVERED:

- Compliance Dates for Small Large Employers
- Eligible Employees / Independent Contractors / Exceptions
- Part-Time Employees
- Unusual Salary Arrangements / Earned Sick Time Rate
- Carry Over
- Combined PTO "Banks"
- Miscellaneous

Compliance Dates for Small and Large Employers

Q: I thought PTO started on February 21st this year?

A: The compliance date for large employers was February 21st. ESTA gave small employers (10 employees or fewer) until October 1, 2025, to comply with the new law.

Q: What month do we start counting the 30 hours?

A: For large employers (11 employees or more), accrual began on February 21, 2025. For small employers, accrual of time begins October 1, 2025.

Q: I have a massage therapist who has not received sick time in the past. As of October first, do I have to accrue the hours that she's worked this whole year?

Answer: No. For a small employer, hours do not start accruing until October 1, 2025.

Q: We already started accrual. Is that alright? I read it as being required no later than Oct. 1.

A: Assuming that you are a small employer and not *required* to being offering earned sick time until October 1st, there is nothing in the law stating that you cannot begin the process prior to that mandatory compliance date.

Q: If there are 11 W-2 employees, does that mean it is not a small business? Must front-load 72 hours?

A: Yes, once the business has more than 10 eligible employees, it is considered a large employer, and the higher maximums apply.

Q: You are saying this starts October 1st. If we use a Jan - Dec fiscal year, what is required for the final quarter of 2025?

A: According to the LEO [FAQs](#), question 15: “A frontloading employer may prorate the 2025 period to align with the employer established 12-month period.” Extrapolating the example given in the FAQs to a small employer:

- Example: If the employer uses a calendar year for ESTA, the employer may frontload based on the period from October 1, 2025, through the end of 2025. Formula: October 1 to December 31 equals 92/365 days, or 25%. An employer could frontload 10 hours for 2025.

This same frontloading method can also be used to determine the initial amount of hours for employees that begin employment later in the year.

Q: If I am front loading and begin October 1, would I need to pay again January 1 for next year?

A: Remember, as seen in the answer above, you do not have to frontload 40 hours on October 1st, as the 2025 amount awarded can be prorated to align with your established January 1 – December 31 benefit year.

Eligible Employees / Independent Contractors / Exceptions

Q: Are any workers exempt from receiving earned sick time?

A: Yes. The ONLY employees exempt from the Act are:

- 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:

1. The policy allows the individual to schedule the individual's 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

Q:

- **Can you expand on the exceptions? We have massage therapists on staff and they create their own schedules. They do receive W2s, but they do not adhere to a policy requiring them to work a set amount of hours or set schedule.**
- **I read that if massage therapists set their own hours/schedule they do not meet requirements. Is this true?**
- **From a Google search: In Michigan, under the Earned Sick Time Act (ESTA), a part-time employee who sets their own schedule may still be eligible for paid sick time, but there's an exception. If the employee's work schedule is self-determined, and the employer has a policy prohibiting adverse action for not working a minimum number of hours, they are exempt from the ESTA. Essentially, if the employee can choose their hours and the employer can't punish them for not working a certain amount, they don't accrue or use paid sick time under the law. True?**

A: There are still many questions regarding exactly what kind of employee this is in reference to. Is it just a 1099 *properly classified* independent contractor, or something else?

At this time, all we have to really go on is what the Whitmer Administration, through Sean Egan, LEO Deputy Director of Labor, has said. In a [webinar](#) released shortly after passage of the law in February [relevant part on exempt employees starting at 12:01], Egan said of the exemption: “**This in our read, is a very narrow exemption.**” Egan continues, saying, “In essence, when we heard from the legislature, what they were trying to accomplish here, they really were focused in on highly compensated individuals that while they are called employees, operate more like they're own employer. So, the employing entity is not paying too much attention to what they do, they're not worried about the hours that they work, they're not signing up for any kind of schedule, they don't control any schedule, so it gets very challenging...”

Egan singles out “folks that sign up on the schedule to work certain hours” as not being exempt, as the employer still controls the schedule.

The bottom line – at least according to the Wage and Hour Division as currently constructed – appears to be that most employees will not be exempt from ESTA.

Egan did also say that they are working with their legal counsel to “define more clearly” exactly what this exemption means. Unfortunately, as of this writing, that additional guidance has not been forthcoming.

The LEO FAQs do have a question regarding this (Question 2: What employees are eligible to receive earned sick time?). However, their answer is also very unclear:

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.

For more on the Economic Reality Test, see the MAC's FAQ document, page 12.

The FAQ also states that "on-call, flexible scheduling, per diem employees, and similar are not covered by this exemption if the employer controls the schedule."

At this time, until further guidance is forthcoming from LEO, the safe bet is to move forward assuming that your workers are NOT exempt from ESTA. If you have independent contractors on staff, consult with an employment attorney to ensure that you have properly classified that worker to avoid misclassification penalties and other liabilities.

Part-Time Employees

Q: Is this [earned sick time] required for part-time employees?

A: Yes. According to the LEO FAQs, Question 2: "An eligible employee is an individual engaged in service to an employer in the business of the employer." This includes part-time employees. Under ESTA, any employee who normally works less than 40 hours per week is considered a part-time employee.

Q: Small businesses are capped at 40 hours paid per year? Can I just pay them up front?

A: Employers both large and small can "frontload" earned sick time hours at the beginning of the benefit year, as defined by the employer. So, yes, using this method, you could award your employees 40 hours at the beginning of the benefit year.

Frontloading benefits include not having to track accrual of hours (employers only need to track how many hours of time employees have used over the benefit year) and no carryover of unused hours from year to year. Disadvantages include higher potential upfront costs and possible risk of an employee quickly using benefits and quitting, although if this happens, according to the LEO FAQs, Question 24, an employer can recoup leave used more than what would have been accrued as of the date of separation (with limitations):

"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."

Q: Can we front load 20 hours every six months? That way if someone leaves the practice it's not as big as a hit.

A: No, the entire amount of frontloaded time must be awarded at the beginning of the benefit year, but see above for ways employers can mitigate risk of an employee who uses all their frontloaded time early and leaves the practice. Just be sure to spell it out in your employment agreement ("prior written, voluntary agreement for the deduction").

Q: So if someone is part-time and you want to front-load, you must do the 40 hr minimum?

A: No. When frontloading time for a part-time employee (normally working less than 40 hours/week), an employer may frontload less than 40 hours for a small business, if:

1. 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;
2. 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,
3. 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).

So, for example, let's say your employee typically has a set schedule that has them working 20 hours per week, 52 weeks of the year. You would:

1. Provide the employee with written notice at the beginning of the benefit year that they are expected to work a total of 1,040 hours over the upcoming benefit year.
2. Frontload 20 hours of earned sick time to that employee.
3. If at any point during the benefit year, that employee's schedule changes and they start to work more hours, provide additional earned sick time based on the accrual method (1 hour for every 30 hours worked). For example, let's say the employee begins regularly working 25 hours per week halfway through the benefit year. Using the accrual formula of one hour for every 30 worked, you would be required to frontload an additional 4.33 hours (5 hours/week x 26 weeks = 130 hours / 30 = 4.33 hours).

Unusual Salary Arrangements / Earned Sick Time Rate

Q: At what dollar rate is the sick time tied to?

A: From the LEO FAQs, Question 21: Earned sick time must be paid at a pay rate equal to the greater of either:

- An employee's normal hourly wage or base wage, or
- The Michigan minimum wage rate then in effect [\$12.48/hour for 2025, \$13.73/hour for 2026, \$15.00/hour for 2027, with inflationary increases (based on Midwest CPI) to follow beginning January 1, 2028, and each subsequent year]

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.

Q: What rate is paid for earned sick time for an associate doctor employee that is paid a percentage of collections?

A: If an associate has no normal hourly wage or base wage, the minimum wage would apply.

Q: On a massage therapist paid \$35/hour on piece rate employee, are we allowed to pay them \$15/hr for sick time, since they are not doing piece work when sick, as long as it is over minimum wage?

A: If said employee has no normal hourly wage or base wage, the minimum wage applies.

Q: What if you bonus your employees? Is that calculated in their sick time?

A: No. 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.

Q: At what dollar rate is the sick time tied to?

A: From the LEO FAQs, Question 21: Earned sick time must be paid at a pay rate equal to the greater of either:

- An employee's normal hourly wage or base wage, or
- The Michigan minimum wage rate then in effect (\$12.48/hour for 2025, \$13.73/hour for 2026, \$15.00/hour for 2027)

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.

Q: What about an employee who is salary?

A: From the LEO FAQ, Question 7: “For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements ... 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”

Q: This means if I front load a full-time employee, they only get 40 hours, but with accrual it climbs to 60 hours?

A: Assuming the employee works 40 hours per week, 52 weeks per year, that employee would earn approximately 69 hours of paid sick time ($40 \times 52 = 2,080 / 30 = 69.33$ hours). Of course, under ESTA, the employer can choose to allow them to only use 40 of those hours in a benefit year, with the additional 29 hours carrying over into the next benefit year).

Frontloading the hours eliminates these concerns.

Q: If you are doing the accrual method and they do not use all of their time, I am a little confused about the carry-over. If you are only required to pay 40 hours max sick time, then what is the point of the carry over?

A: If using the accrual method, an employer is only required to allow employees to *use* a maximum of 40 hours of earned sick time per benefit year, not to *earn* 40 hours. A full-time employee (40 hours/week, 52/year) would earn approximately 69 hours, up to 40 of which (if unused, ESTA requires they be able to carry over into the next benefit year.

Q: Is the carry over for just one year or can they roll over hours for multiple years in a row?

A: According to the LEO FAQ, Question 13: Assuming the accrual method is being used, “employees shall be allowed to carry over up to 40 hours, for small business and 72 hours for other employers.” So, even if an employee has, for example, 50 hours of unused earned time at the end of the benefit year, the employer can allow them to only carry over 40.

Do those additional hours need to be “paid out?” No. According to LEO Question 23, “Employers using the accrual method of calculating ESTA may choose to create a policy that allows employees to be paid out OR [Emphasis added] carry over up to 40 hours, for small business, and 72 hours for other employers.

Q: Are we absolutely required to carry over hours?

A: If using the frontloading method to award earned sick time, no carryover of unused hours is required. If using the accrual method, an employer must allow an employee to carry over up to 40 hours of unused time.

Combined PTO Banks

We received many questions regarding combined paid time off “banks” / combined sick time / vacation time / unlimited PTO / etc. These include:

- 1. What about salaried employees? I give my associates and manager four weeks of vacation if they have been with me five years or more. Do I still have to give them the 69.33 hrs on top of that?**
- 2. I give my staff more sick hours than required. I frontload. I also offer vacation hours. I pay them at the end of the year for hours not used. Do I still need to keep some sort of track of these hours?**
- 3. What are the PTO compliance requirements to combine benefits?**
- 4. Are sick time and vacation time all considered the same bank of hours?**
- 5. Can you expand on the last question? Does this need to be on top of existing vacation time if they already get two weeks or more?**
- 6. Can you repeat the rules if employees currently get a week paid vacation and paid sick time with this new EST policy**
- 7. So, I am confused. If employees are already given two weeks of vacation per year, can the sick time be combined with that so it is two weeks’ vacation/sick time? Or are they two separate things?**

8. What if you have an unlimited PTO policy? Do you still need to track sick time?

A: The version of ESTA passed by the Michigan Legislature and signed into law by Governor Whitmer earlier this year improves the ability of employers to offer a single “bank” of paid time off. The law [MCL § 408.963(7)] states that an employer is in compliance with this section if the employer meets either of the following conditions:

(a) Provides the employer's employees with paid time off in not less than the same amounts of time off as provided under this act that may be used for the purposes described [under ESTA] or any other purpose [Emphasis added].

In other words, according to the LEO FAQs, Question 19, 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.”

Expanding on this in Question 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?), the LEO FAQs state: “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.”

As far as documenting how employees use their time off, employment attorneys seem to recommend that while not explicitly laid out in the law, it is probably advisable that employers track time off an employee uses for ESTA-related purposes, due to the record-keeping requirements of the act (MCL §408.970):

An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

In other words, if using a combined PTO bank, keeping diligent track of the uses of your employee’s uses of their time – and making explicit note of when it is being used for an allowed purpose under ESTA, such as by asking the employee to indicate via a time off request that PTO is being used for ESTA-related purposes – protects the employer should an employee dispute whether the employer allowed earned sick time to be taken.

Miscellaneous

Q: So, who determines if an employee is actually sick or if they are just taking a paid day off? Seems like a great way to abuse this.

A: Under ESTA, an employer can require documentation for the use of earned sick time, but only under certain circumstances. According to the LEQ FAQs, Question 26:

- 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.

Q: If I close the office for a personal reason, and we are not open for patients, do I have to pay for those days off?

A: No. Under the law, this is not a permissible reason for the use of an employee's earned sick time. For allowed reasons, see the LEO FAQs, Question 17.

Q: A part-time employee works Monday and Thursday for about 17 hours per week. They make a personal doctor's appointment on a Wednesday. Am I responsible to pay them for that time, even though it is not when they would be working?

A: No. Under ESTA, employers are not required to pay employees for time they weren't scheduled to work. From the LEO FAQs, Question 15: "Employees may use ESTA for scheduled work hours."

Q: Payout for Unused Time

- a. If an new employee leaves within the 90-day probationary period, are they entitled to being paid for what they have accrued?**
- b. If an employee quits or is fired, are they owed payment for unused hours?**
- c. I thought you mentioned that unused sick time did not have to be paid out.**

A: Employers are not required to "provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment." [MCL §408.965(3)]

Employers should closely examine their current written employment policies regarding paid leave payments upon termination and/or voluntary separation to determine what their obligations may be, and to either adhere to those obligations or re-write the policy accordingly.

Note: Under MCL §408.965(1), if an employee separates from employment – whether terminated or voluntarily – "and is rehired by the same employer not more than two months after the separation, the employer shall reinstate previously accrued, unused earned sick time and shall allow the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement."

This does not apply if the employer paid an employee the value of the employee's unused accrued earned sick time at the time of separation.

Additional Assistance

Q: Do you offer services where we could get help while we're implementing this? Is there a way to work with Lesley?

A: Lesley Herald can be reached through LesleyHeraldConsulting.com.

Q: Can we get the links in an email?

A: An email was sent to all attendees on Thursday, August 21, 2025. It contained:

- Lesley Herald's Slide Deck (attached)
- The MAC-Developed FAQ Document (attached)
- Michigan Department of Labor and Economic Opportunity, Wage & Hour Division, Required Poster, General Requirements – Earned Sick Time Act [[WHD 9911](#) (Revised 2/27/2025), [Spanish](#) Version, [Arabic](#) Version]
- The Michigan Department of Labor and Economic Opportunity [FAQ](#) Document
- The Michigan Chamber of Commerce [FAQ](#) Document

Additional resources can be found here:

- Michigan Department of Labor and Economic Opportunity, Earned Sick Time Act [webpage](#)
- Michigan Chamber of Commerce [Paid Leave, Minimum Wage Toolkit Downloads](#)
- Small Business Association of Michigan (SBAM) [Earned Sick Time Act Compliance Hub](#) (must be an SBAM member to access these resources)

Q: Can you send this recording to the attendees, so our managers can watch?

A: When the August Statewide District Meeting recording is on our website, we will send an email to attendees letting them know.

Q: Is there a cheat sheet for these requirements somewhere?

A: Not *per se*, but there are a number of resources available in the Michigan Chamber toolkit referenced above.

Q: Who do we email questions to?

A: Additional questions can be emailed to MAC Assistant Director Tim Gaughan, tim@chiromi.com.