

# Michigan Amends Its Minimum Wage and Earned Sick Time Laws Effective Immediately... Again

## Labor & Employment Law Update

By Kevin Kleine and Sara Zorich on February 24, 2025

On Friday, Feb. 21, Governor Whitmer signed House Bill 4002 (H.B. 4002) and Senate Bill 8 (S.B. 8) into law, which impose last minute and new amendments to Michigan's Earned Sick Time Act (ESTA) and minimum wage law (i.e., the Improved Workforce Opportunity Wage Act) that were set to take effect on Feb. 21, 2025.

Both bills were effective immediately upon the governor's signature, making it critical for employers to understand the amendments.

### [Background on Michigan's Sick Time and Minimum Wage Requirements](#)

Taking a step back, in 2019, Michigan's legislature adopted ballot measures regarding the sick time and minimum wage requirements passed by voters. Then, due to litigation, Michigan's legislature repealed these ballot measures and enacted different versions of the sick time and minimum wage laws.

In July 2024, Michigan's Supreme Court struck down the amendments made by Michigan's legislature to the sick time and minimum wage laws and reinstated the original versions that were adopted as ballot measures. Michigan's Supreme Court set a deadline of Feb. 21, 2025, for the original versions of these laws to take effect.

While Michigan employers were already preparing to comply with the Feb. 21 deadline imposed by the July order, Michigan's legislature passed H.B. 4002 and S.B. 8 at the eleventh hour on Thursday to clarify and "clean up" concerns about these laws.

Michigan's Department of Labor & Economic Opportunity updated its FAQs to reflect the new changes to the minimum wage and ESTA laws signed into law on Friday.

## Minimum Wage Amendments

S.B. 8 increases Michigan's minimum wage from \$10.56/hour to \$12.48/hour effective Feb. 21, 2025. Under S.B. 8, Michigan's minimum wage will increase to \$13.73/hour on Jan. 1, 2026, and \$15/hour on Jan. 1, 2027, with adjustments and increases based on inflation each year thereafter.

S.B. 8 did not change the minimum wage rate for tipped workers in 2025, which is currently \$4.74 (i.e., 38 percent of the general minimum wage rate of \$12.48). But, under S.B. 8, the minimum wage rate for tipped workers will increase 2 percent each year beginning Jan. 1, 2026, until it reaches 50 percent of the state's general minimum wage rate in 2031.

S.B. 8 also adds and imposes a new \$2,500 fine on employers who fail to pay tipped workers the required minimum wage rate.

## Earned Sick Time Amendments

Several key amendments and clarifications to Michigan's Earned Sick Time Act (ESTA) under H.B. 4002 are summarized below.

- The definition of "small business" changed from "fewer than 10 employees" to "10 or fewer employees." Accordingly, employers with 10 or fewer employees (i.e., small businesses) are only required to provide employees with up to a maximum of 40 hours of sick time each year. All other employers must provide employees up to a maximum of 72 hours of sick time each year. Employers can limit the amount of sick time employees may use each year to the minimum amount of hours required to be provided under the ETSA (i.e., 40 hours and 72 hours respectively).
- Employers may now allow employees to use sick time in one-hour increments or the smallest increment the employer uses to account for absences.
- Employers can frontload the required hours at the beginning of the year for immediate use. Employers who do this are not required to allow employees to carry over unused sick time to the following year. Additionally, employers who frontload the hours are not required to calculate and track the accrual of paid sick time for full-time employees since its provided all at once at the beginning of the year.
- Employers can frontload the required hours to part-time employees at the beginning of a year for immediate use (including frontloading a prorated number of hours) as long as all of the following conditions are satisfied:
  1. The employer provides the part-time employee with 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 at the beginning of the year is, at a minimum, proportional to the earned sick time that the employee would

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accrue if they worked all of the hours expected as provided in the written notice; and

3. If the employee works more hours than what is expected as provided in the written notice, the employer must provide additional earned sick time.
- Employers who do not frontload the hours must allow employees to accrue sick time at a rate of one hour for every 30 hours worked. There is a cap on use of 40 hours for small businesses and 72 hours for all other employers but not cap on the amount of accrual.
  - Employers can make newly hired employees wait 120 days after commencement of employment to use earned sick time but no waiting period for current employees.
  - Employers can provide the required sick time under a general paid time off (PTO) policy, so long as:
    1. Employees are provided with the minimum amount of hours required under the ESTA; and
    2. Employees can use PTO for the same reasons allowed under the ESTA.

Employers who provide employees with an amount of PTO that satisfies the above conditions are not required to provide employees with sick time in addition to the PTO hours provided under the employer's general PTO policy. We are still waiting further information regarding specifics on this change.

- Employers are not required to provide sick time to the following exempt individuals:
    1. U.S. government employees.
    2. An employee who works in accordance with a policy of the employer if both of the following conditions are met:
    3. The policy allows the individual to schedule their own working hours; and
    4. The policy prohibits the employer from taking adverse employment actions against the individual if the individual does not schedule a minimum number of working hours.
  - 5. Unpaid trainees or interns.
  - 6. Those employed in accordance with Michigan's Youth Employment Standards Act.
- For purposes of the ESTA, an employee's normal hourly rate of pay **does not** include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, and tips or gratuities.
  - The ESTA does not require employers to pay out earned but unused sick time upon an employee's termination or separation from employment. However, an employee's unused sick time must be reinstated if they return within two

months after the termination of the employment relationship, unless the value of the sick pay was paid out at time of termination or transfer. Employers must permit an employee to use and accrue additional sick time upon reinstatement of employment if required under the ESTA.

- New businesses will have a three (3) year grace period after forming to comply with the ESTA, and small businesses have until October 1, 2025 to comply with certain requirements under the ESTA, including the requirement to provide employees with the required number of sick time hours under an accrual or frontloading method, and the requirement to calculate and track an employee's accrual of paid earned sick time.
- An employer may require the employee to provide documentation related the paid sick leave taken within 15 days of the request but can only require the documentation after three (3) consecutive days off.
- An employer can discipline an employee for failure to notify the employer of the need for leave under the policy or misuse of the leave for purposes other than those provided under the law.
- Employers have an additional 30 days to post the required poster and give employees notice of their EST policy.
- The changes expand on the existing CBA language to specify "[i]f an employer's employees are covered by a collective bargaining agreement on the effective date of this act and the collective bargaining agreement conflicts with this act, this act applies beginning on the state expiration date in the [CBA]....". Thus, if a CBA is in effect on Feb. 21 and it conflicts with the ESTA, then the ESTA does not apply to the employees subject to that agreement until the stated expiration of the agreement.
- Prior provisions of the ESTA that included a private right of action for employees to sue their employers for ESTA violations have been removed.

### Key Takeaways for Employers

There is a lot of ambiguity with the new amendments to the ESTA. Therefore, it is critical for employers to consult with experienced labor law counsel to navigate and understand these changes and comply with the ESTA and Michigan's minimum wage laws. Be assured we will continue to provide updates as they develop.

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