

Legislative Analysis



EARNED SICK TIME AMENDMENTS

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<http://www.house.mi.gov/hfa>

House Bill 4002 as introduced

Sponsor: Rep. Jay DeBoyer

**Committee: Select Committee on Protecting Michigan Employees
and Small Businesses**

Complete to 1-14-25

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4002 would amend the Earned Sick Time Act to change the terms under which employers are required to provide paid sick time to employees.

Background

Section 9 of Article II of the state constitution provides an initiative process for proposing laws by petition. An initiative petition must be signed by a number of voters equal to 8% of the total votes cast for all candidates for governor in the most recent gubernatorial election. Once certified, the petition is presented to the legislature, which has 40 days to enact or reject it without amending it. If the legislature enacts it, the law proposed by the petition becomes a public act without going to the governor for approval. (The governor cannot veto such an enactment.) If the legislature rejects it, the initiative petition is put before the voters at the next general election. If the voters approve it, the resulting law can be amended or repealed only by a three-fourths vote of members elected to and serving in each house of the legislature.

In addition, instead of enacting or rejecting a petition, the legislature can propose a different measure on the same subject. In this case, both the initiative petition and the legislature's alternative measure go on the ballot at the next general election, and the one that receives the most votes becomes law.

In July 2018, the legislature passed the Earned Sick Time Act¹ (2018 PA 338), an initiative petition that was certified by the Michigan Board of Canvassers to appear on the Michigan ballot in the November 2018 general election.² Then, after the election, 2018 PA 369 was enacted to amend the provisions of that act as they had been proposed by the initiative petition and passed by the legislature.³

In July 2024, the Michigan Supreme Court (MSC) ruled in *Mothering Justice v Attorney General* that the legislature's 2018 practice of adopting and amending proposed ballot measures during the same legislative session is unconstitutional.⁴ The court voided 2018 PA 369 and restored the Earned Sick Time Act (and the Improved Workforce Opportunity Wage

¹ The act's name was changed to the Paid Medical Leave Act when it was amended by 2018 PA 369. The name will revert to the Earned Sick Time Act on February 21, 2025. Under the bill, the name also would be the Earned Sick Time Act. For simplicity, this document will only use the term *earned sick time*.

² <https://legislature.mi.gov/documents/2017-2018/initiative/pdf/SickTimeInitiativeHouseAnalysis.pdf>

³ <https://www.legislature.mi.gov/Bills/Bill?ObjectName=2018-SB-1175>

⁴ <https://statecourtreport.org/case-tracker/mothering-justice-v-attorney-general>

Act, a similarly adopted and amended initiative) as it was proposed by petition and originally enacted by the legislature. The reinstated version is set to take effect on February 21, 2025.⁵

Generally speaking, this document outlines the changes the bill would make to the act as it is currently effective (as of January 14, 2025)—that is, the terms “currently” and “current law” do not refer to the version of the act that will be revived effective February 21, 2025, under the MSC decision.

Defining employee and employer

The act currently requires *employers* to provide *eligible employees* with paid sick time.

Employer currently means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. It does not include the United States government, another state, or a political subdivision of another state.

Eligible employee means an individual engaged in service to an employer for whom an employer is required to withhold pay for federal income tax purposes. It would not include any of the following:

- An individual employed by the United States government, another state, or a political subdivision of another state.
- An individual whose primary work location is not in Michigan.
- An individual employed by an employer for 25 weeks or less in a benefit year for a job scheduled for 25 weeks or less in a benefit year.
- An individual who worked, on average, less than 25 hours per week during the immediately preceding benefit year or is expected to work, on average, less than 25 hours per week in the current benefit year.
- A variable hour employee as defined in federal regulation.
- An individual employed by an air carrier as a flight deck or cabin crew member who is subject to subchapter II of the federal Railway Labor Act.
- An employee as described in section 201 of the federal Railway Labor Act.
- An employee as defined in section 1 of the federal Railroad Unemployment Insurance Act.

(Effective February 21, 2025, under the law as revived by the MSC decision, the term *employee* will replace *eligible employee* in the act and will mean an individual engaged in the service of an employer in the business of the employer, and the term *employer* will include any entity described above with one or more employee, except the federal government and its employees.)

The bill would retain the term *eligible employee* and the current definitions of both *eligible employee* and *employer*.

⁵ <https://www.faegredrinker.com/en/insights/publications/2024/8/michigan-supreme-court-reinstates-voter-initiated-sick-leave-law>

For information related to the current law, see: <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/pmla>

For information related to the law as revived by the MSC decision effective February 21, 2025, see: <https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act>

Accrual of paid earned sick time

The act currently requires employers to provide eligible employees at least one hour of paid earned sick time for every 35 hours worked. They are not required to allow the accrual of more than one hour per calendar week and 40 hours per benefit year. In addition, employers must allow employees to carry over up to 40 hours of paid earned sick time from one benefit year to the next. Employers do not have to allow employees to use more than 40 hours of paid sick time each benefit year.

Alternatively, employers can provide at least 40 hours of paid earned sick time at the beginning of a benefit year (or a prorated amount for employees hired during the year) and are not required to allow carryover between benefit years.

Employees can use the time as it is accrued, except that employers can require them to wait until the ninetieth calendar day of their employment to begin using it.

Under the bill, employees would accrue at least one hour of paid earned sick time for every 30 hours worked, not including hours used as paid leave. The relevant required amounts of paid leave described above would be increased from 40 hours to 72 hours.

Further, an employer that provided leave in a block at the beginning of the benefit year would not have to calculate and track employee accrual of leave.

For the benefit years occurring when the bill takes effect, the required leave amounts provided before the effective date would count toward the required amounts.

The bill also would specify that an individual that is exempt from overtime requirements under the federal Fair Labor Standards Act is assumed to work 40 hours per workweek unless their normal workweek is less than 40 hours.

(Note that the law as revived by the MSC decision contains provisions specific to small businesses [those with fewer than 10 full-time employees] that allow them to cap employee accrual and usage of earned sick time at 40 hours of paid time and 32 hours of unpaid time per year. The bill, which would no longer apply at all to businesses with fewer than 50 employees, would eliminate this provision.)

Pay rate

Currently, the act specifies how to calculate the wage that must be paid to employees for paid earned sick time. The bill would add that tips do not need to be included in this calculation.

Use of paid earned sick time

Currently, the act specifies the purposes for which an employer must allow an employee to use paid earned sick time.

The bill would add that use for meetings at a school or place of care related to the health or disability of a child who is a family member, or the effects of domestic violence or sexual assault on the child, is a permissible use of leave.

The bill would provide that employers cannot require employees to search for or secure a replacement worker as a condition of using earned sick time.

The bill would also allow employers to require earned sick time to be taken concurrently with any applicable leave under any of the following laws:

- The federal Family and Medical Leave Act of 1993 (FMLA).
- Title I of the federal Americans with Disabilities Act of 1990.
- Any other applicable state or federal law.

Complying with employer requirements

The law currently requires employees to comply with the employer's notice, procedure, and documentation requirements when requesting to use leave. Employers must give employees at least three days to provide the required documentation. Employers are allowed to discipline employees if they do not follow these requirements.

The bill would provide that an employer's notice, procedure, and documentation requirements would need to be specified in their employee handbook or another employee benefits document.

(Note that the law as revived by the MSC decision will allow employers to require advanced notice from an employee of up to seven days before the foreseeable use of earned sick time, or notice as soon as practicable for sick time that was not foreseeable.)

The bill also would allow for the discipline of an employee that misses work for three or more consecutive workdays without contacting the employer in a manner acceptable to the employer.

Employers could require reasonable documentation or certification (as described in the FMLA) when earned sick time is used for three or more consecutive days. Employees would have to provide this documentation within 15 days of an employer's request, but employers could not delay the commencement of earned sick time because they had not yet received documentation. Documentation signed by a health care provider that indicates that earned sick time is necessary would be considered reasonable documentation.

Except as otherwise required for FMLA leave used concurrently with earned sick time, an employer could not require documentation that explains the nature of an illness. Employers would be responsible for the cost of acquiring any required documentation.

The law as revived by the MSC decision contains provisions prohibiting retaliatory personnel action against employees that exercise their rights under the act. The bill does not include these provisions.

Separation from employer

Currently, if an employee is no longer employed by an employer and is then rehired, the employer does not have to allow the employee to retain any of their previously accumulated earned sick time.

Under the bill, the employee would be allowed to use previously accrued sick time if they were rehired within six months of separating from the employer. Further, if a different employer succeeded or took the place of a previous employer, the new employer would be required to assume responsibility for the earned sick time rights of the employees.

The above provisions would not apply if the employer paid out the value of the accrued sick time at the time of separation or succession.

Departmental investigations

The act currently requires the Department of Labor and Economic Opportunity (LEO) to investigate claims made by employees regarding potential violations of the act and to prescribe certain penalties for violations. Affected employees can file claims within six months of an alleged violation.

The bill would give up to three years to file a complaint and expand the penalties that can be recovered by LEO and granted to the affected employee from only improperly withheld sick time to “all appropriate relief,” which could include payment of all improperly withheld earned sick time, all direct damages incurred by the complainant as the result of the violation, back pay, and reinstatement in the case of job loss.

In addition, the bill would require that, if the LEO director determines there is a reasonable belief that an employer violated the act and the department is unable to obtain voluntary compliance from the employer in a reasonable time, the department could investigate and bring civil action on behalf of all eligible employees affected at the same work site.

Notice requirements

The act currently requires employers to display a poster with certain information in a conspicuous place accessible to employees.

The bill would require that employers provide a notice to all eligible employees by the later of February 21, 2025 or their date of hire that includes, at a minimum, all of the following:

- The amount of earned sick time required to be provided to an eligible employee under this act.
- The employer’s choice of how to calculate a benefit year.
- The terms under which earned sick time may be used.
- That retaliatory personnel action taken by the employer against an eligible employee for using earned sick time for which the eligible employee is eligible is prohibited.
- The eligible employee’s right to file a complaint with LEO for any violation of the act.

The notice would have to be in English and any other language predominantly spoken by the employer’s workforce, if the department has translated the notice into that language. (The law as revived by the MSC decision will require notices to be in any language spoken by at least 10% of the employers workforce, as long as LEO has published the documents in that language.)

In addition, a poster with the above information would need to be posted in a conspicuous place that is accessible to eligible employees, subject to the same language requirements described above.

These posters would be created by LEO in English, Spanish, and any other language considered appropriate.

Records retention

Currently, the act requires employers to maintain records documenting hours worked and earned sick time taken for one year. Records must be open to inspection by the LEO director.

Under the bill, records would need to be maintained for three years. In the event a question arose about whether an employer violated the act and sufficient records are not available, the employer would be presumed to have committed a violation unless rebutted by clear and convincing evidence.

Multilingual outreach program

The bill would require LEO to develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under the act. The program would need to include distribution of notices and other written material in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

Employee protections

The bill would add provisions prohibiting employers and any other person from interfering with, restraining, or denying the exercise of or attempt to exercise any rights protected by the act, including, but not limited to, any of the following:

- Use earned sick time in accordance with the act.
- File a complaint with LEO or inform any person about any employer's alleged violation of the act.
- Cooperate with the department in its investigations of alleged violations of the act.
- Inform any person of the person's rights under the act.

Collective bargaining agreements

The bill would specify that the act establishes only minimum requirements for earned sick time and could not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to eligible employees.

Any contract or agreement that provided less than that provided by the act would be null and unenforceable.

Rules

The bill would allow the LEO director to promulgate rules as necessary to administer the act.

Other changes

The law as revived by the MSC decision includes language allowing an employee to bring a civil lawsuit against an employer alleged to have violated the act. The bill does not include these provisions.

The bill would make other changes to codify administrative changes that have occurred since it was last amended.

MCL 408.962 et seq.

FISCAL IMPACT:

House Bill 4002 would not have an appreciable fiscal impact on any units of state or local government. The bill would not affect any of the administrative responsibilities that the Department of Labor and Economic Opportunity possesses with respect to earned sick time requirements. Any potential costs incurred by government units, as employers, for providing earned sick time in compliance with the bill's provisions would likely be similar in scope to costs that would otherwise be incurred beginning in February 2025, considering the Michigan Supreme Court's decision in *Mothering Justice v Attorney General*. There may be marginal cost differences between the provisions of the bill and provisions that would otherwise become effective in February 2025, but these differences cannot be currently estimated, as they would largely be driven by employee behaviors that cannot be forecast.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.