



## Frequently Asked Questions: Michigan's Earned Sick Time Act

***NOTE: This FAQ was prepared by Olivia Lanctot, Attorney at Smith Haughey Rice & Roegge, the Grand Rapids Chamber, and the Michigan Chamber to help members comply with Michigan's Earned Sick Time Act (ESTA). It is intended to convey general information only; it should not be relied on as legal advice or opinion.***

### **What is a “tip credit?”**

In Michigan, the “tip credit” allows employers to pay tipped employees a lower hourly wage, expecting that tips will make up the difference to meet the state's full minimum wage. If tips don't cover the gap, the employer must pay the difference.

### **What type of employees does the ESTA cover? Both exempt and non-exempt employees? Salaried employees? Contracted employees through a temp service? Seasonal workers? Independent contractors? Interns?**

ESTA does not exclude temporary employees, exempt employees or any part-time employees- I would say this does include seasonal workers, temps, and interns. IC may be different, if you control their schedule, and maybe a few other factors, they will qualify for ESTA accrual.

Employee- individual engaged in service to an employer in the business of the employer. The only exemption is for those employed by the US government.

### **If an employee is terminated and then rehired/reinstated, do they keep past earned sick time?**

If the person is rehired within 6 months their time will be reinstated.

### **Is there a minimum number of hours worked per week to qualify for earned sick time? Or is it 1 hour for every 30 hours worked regardless of how long it takes to accrue the 30 hours?**

It is 1 hour for every 30 hours, no matter how long it takes to get to the 30 hours. For example, they do not need to work 30 hours within 1 week to earn their 1 hour. It could be 10 hours for three weeks and they earn 1 hour.

**Does accrual of earned sick time begin upon hiring or is there a probationary period that an employee must complete before an employer is required to start accrual?**

Accrual begins upon the commencement of the employee's employment. The employee can use it as accrued, but if the employee was hired after the ruling an employer may require a 90-day waiting period before the time can be used.

**For capped use of earned sick time, does the annual limit align with the calendar year or follow a rolling annual period for each individual employee?**

A year is a consecutive 12-month period as determined by the employer.

**Does 72 hours of carryover accrued time cover the 72 hours for the following year or is the accrual uncapped?**

Accrual is uncapped, however the employer can limit the employee to using a max of 72 paid hours per year, even if they have more hours banked. Small businesses can cap the paid hour use at 40 hours per year but must offer 32 unpaid hours on top of that. (Assuming the employee has accrued at least 72 hours)

**Can earned sick time be combined with vacation time or will it be required to keep these allocations separate?**

An employer will be in compliance if they offer paid leave in at least the same amounts as that provided under the act that may be used for the same purposes and under the same conditions. If your business's current policy gives employees hours at a rate equal or greater to 1 for 30, and they can be used for the mental and physical medical issues listed in the act, it will be in compliance.

**Will Paid Sick Time accrue during an employee's use of PTO? Paid volunteer time? During holidays? Unscheduled business closures?**

No. The employee will only accrue on actual hours worked.

**Is all earned sick time able to be converted into salary or only earned sick time credited due to overtime?**

Comp time from overtime work can be converted into salary.

**Are there any types of employees exempt from the overtime earned sick time credit of 1.5 hours for every 1 hour worked?**

It is only the overtime that earns 1.5 comp hours. The sick time is 1 hour earned for every 30 worked. Applies to all.

**Are there any examples of employment separation that would disqualify a former employee from being able to collect remaining earned sick time payment?**

It is the comp time that an employee can collect upon separation from the company. I'm not sure, but there could be something like gross negligence that would discharge the employer from their duty. But I don't know.

**Can an employer require that paid sick time only be used for medical reasons, or are all uses allowed?**

Sick time can only be used for mental or physical medical care. However, what qualifies as mental or physical medical care has been expanded, and the employee can use their sick time for the mental or physical medical care of a family member.

Comp time under the Wage Act can be used for any reason.

**Can an employer refuse earned sick time to carry over to the following year if they also do not allow PTO to carryover?**

No. But if your company already has a policy that meets the minimum requirements then you would be covered without the carryover.

**Can an employer require all overtime earned be paid out instead of giving employees an option to convert to paid sick time?**

One hour of overtime will earn an employee 1.5 hours of comp time, not sick time. The employee has the choice.

**Can an employer "frontload" paid sick time? Does this impact their ability to "frontload" PTO?**

ESTA is silent on this question, and we will be seeking further guidance from the state.

**Can an employer require a doctor's note when using paid sick time?**

Yes, The ESTA says: "For earned sick time of more than 3 consecutive days, an employer may require reasonable documentation that...time...has been used for a purpose [described in the act]. Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation..." It also says: "An employer shall not require that the documentation explain the nature of the illness or the details of the [domestic] violence.

### **When does IWOA go into effect?**

205 days from the ruling on July 31- February 21, 2025

### **What is the likelihood of this 100% going into effect? Should employers start making changes now or wait for XX weeks before making adjustments?**

Do not wait. This will go into effect. The only way this will not happen is if there are proposed changes, or an entirely new act, and it goes through the legislature, is either adopted or sent to the polls and approved by the voters, and ultimately supersedes this one.

### **Can an employer require that all accrued earned sick time be used for only medical time or will this time be allowed for use for any PTO the employee wishes?**

ESTA allows employees to use sick leave for any of the following: (1) Physical or mental illness, injury, or health condition of the employee or his or her family member; (2) Medical diagnosis, care, or treatment of the employee or employee's family member; (3) Preventative care of the employee or his or her family member; (4) Closure of the employee's primary workplace by order of a public official due to a public health emergency; (5) The care of his or her child whose school or place of care has been closed by order of a public official due to a public health emergency; (6) The employee's or his or her family member's exposure to a communicable disease that would jeopardize the health of others as determined by health authorities or a health care provider; (7) Meetings at a child's school or place of care related to the child's health or disability.

### **Can an employer convert earned sick time into PTO and reduce the sick time equal amount?**

This is going to be tricky for employers to navigate, as there are legal downsides to keeping time in one PTO bank. While the ESTA provides the employer is in compliance "if the employer provides any paid leave, that may be used for the same purposes and under the same conditions provided in this act and that is accrued in total at a rate equal to or greater than the rate described...", the "under the same conditions" language is problematic. Employers are advised to carefully study what might need to change with their existing paid time off (PTO) policies if wishing to proceed with combining ESTA leave with paid time off (PTO) or other banks of leave time. It would seem the ESTA limits the types of restrictions employers can put on all leave time when choosing this option (e.g., would prohibit employers from requiring advance notice, mandating that vacation/personal time be used in half day/full day requirements, etc.).

### **How can restaurant owners get more involved in helping advocate for changes following this ruling? How is the GR Chamber advocating alongside these restaurant owners?**

Restaurant owners can get more involved by actively participating in events like the statewide town hall on August 28, where they can discuss the ruling, learn about next steps, and explore various ways to engage. This event will include a call to action and opportunities for direct involvement.

The GR Chamber is advocating alongside restaurant owners by working closely with legislators to minimize the impact of the ruling and support a smoother transition for all affected industries. We're focused on educational outreach and raising awareness, actively engaging with legislators on both sides of the aisle to advocate for legislation that balances the need for good-paying jobs with the survival of small businesses.

**Where can I read the full decision?**

[https://www.courts.michigan.gov/siteassets/case-documents/uploads/opinions/final/sct/165325\\_115\\_01.pdf](https://www.courts.michigan.gov/siteassets/case-documents/uploads/opinions/final/sct/165325_115_01.pdf)

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**We are working to obtain answers to the following questions from the Department of Labor and Economic Development. Please note that these responses will be guided by the department's implementation decisions.**

- Is there any legal challenge to “typical” earnings being paid under ESTA? As gratuities are directly paid to the employee and at no time belong to the employer (under federal law). Does this also apply to employees that receive commissions?
- Can an employer require a maximum amount of time that an employee can reconsider their choosing of comp time over overtime payment? Or can an employee choose at any time to convert overtime earned sick time into salary?
- Can an employer require “lead time” for employee notification to convert comp time from OT to salary?
- Can an employer require that all overtime earned MUST be converted to paid sick time instead of salaries?