



## Supreme Court’s Ruling on Michigan’s Paid Sick Leave and Minimum Wage Laws: *What Needs to Change*

**What happened:** The Michigan Supreme Court ruled in July 31, 2024 that two 2018 ballot initiatives to increase the state’s minimum wage and mandate paid sick leave requirements for employers should be put into effect — despite never being voted on by the people — saying the strategy the Michigan Legislature used to adopt alternative legislation violated the Michigan Constitution.

### Key changes:

- **Earned Sick Time Act** – Beginning Feb. 21, 2025, all employees — full-time, part-time and seasonal — must receive one hour of paid sick leave for every 30 hours worked (72 hours/year). Small businesses (less than 10 employees) have their own mandate. All employers, including those with paid time off policies (PTO) currently in place, need to rethink their approach to leave time. Employers also need to strike policies requiring advanced notice, rethink whether to require documentation and offer one bank of PTO, and watch out for new and crafty avenues to litigation.
- **Minimum Wage** – The Court said The Improved Workforce Opportunity Wage Act (minimum wage provisions) will take effect on Feb. 21, 2025, but “with a revised schedule that links the gradual phase-in of minimum-wage increases to the same annual schedule as originally proposed, but set into the future, and accounting for inflation.”

While the Michigan Chamber fundamentally disagrees with the Court’s ruling and constitutional interpretation, the decision cannot be appealed.

The Chamber is on the job for you and will continue to fight back with a two-pronged strategy:

1. **Compliance** – This chart breaks down businesses’ compliance obligations, comparing the difference between current law (the Paid Medical Leave Act) and the law the Court put into effect with this ruling (the Earned Sick Time Act).
2. **Legislation** – With the power of our members and the business community behind us, we believe we can be successful in softening the impact of this adverse Supreme Court ruling via legislative changes. Be on the lookout for additional information about how you can engage and help lawmakers understand how this ruling negatively impacts your business and workers.

**Have questions?** Contact Wendy Block, Senior Vice President of Business Advocacy for the Michigan Chamber, at 517-371-7678 or [wblock@michamber.com](mailto:wblock@michamber.com).

| <b>Paid Leave</b>  |  |   |
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| DISCLAIMER: The information provided herein is provided for informational purposes only and should not be construed as legal advice on any subject matter. We recommend seeking assistance from a licensed attorney for compliance advice. |  |   |
|  | <b>Current Law (<a href="#">Public Act 369 of 2018</a>; Paid Medical Leave Act [PMLA])</b>   | <b>What's Required Under the MI Supreme Court Ruling ("<a href="#">Earned Sick Time Act</a>" [ESTA]) – effective 2/21/25</b>  |
| <p><b>DEFINITION OF EMPLOYER</b><br/><i>(Determines which businesses need to comply)</i></p>   | <ul style="list-style-type: none"> <li>The PMLA only applies to businesses who employ 50 or more individuals.</li> <li>All employees are counted in determining whether an employer meets the 50-employee threshold.</li> </ul>  | <ul style="list-style-type: none"> <li>The ESTA applies to “any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs one or more individuals.”</li> </ul>   |
| <p><b>ELIGIBLE EMPLOYEES</b><br/><i>(Determines which employees need to be extended the benefit)</i></p>   | <ul style="list-style-type: none"> <li>The PMLA applies to “eligible employee” - defined as an individual who an employer is “required to withhold for federal income tax purposes.”</li> <li>The law has 12 specific employee exemptions, including: employees exempt from FLSA overtime requirements, private sector employees covered by a collective bargaining agreement, temporary workers, employees who work in other states, independent contractors, certain seasonal and part-time employees, variable hour employees, flight deck, cabin crew and railroad workers.</li> <li>The PMLA allows employers to “require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave.”</li> </ul> | <ul style="list-style-type: none"> <li>Under the ESTA, leave is available to any “individual engaged in service to an employer in the business of the employer.”</li> <li>The law contains <u>no employee exemptions</u>; it applies to full-time, part-time and seasonal employees; FLSA exempt employees; and flight deck, cabin crew and railroad workers. NOTE: Questions remain regarding whether the language applies to independent contractors and/or temporary employees. This is because of the “in service to” language rather than clearly specifying it only applies to individuals who the employer is required to withhold for federal income tax purposes.</li> <li>The “act provides minimum requirements...and shall not be construed to preempt, limit, or otherwise affect the applicability of...a collective bargaining agreement, that provides for greater accrual or use of time off.”</li> <li>No initial waiting period is allowed before ETSA hours can be used by an employee (i.e., it can be earned</li> </ul> |

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| <p><b>SINGLE BANK OF LEAVE TIME (VERSUS SEPARATE BANKS FOR SICK, VACATION/ PERSONAL)</b></p> | <ul style="list-style-type: none"> <li>The PMLA contains a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year. "Paid leave" is defined as including, but not limited to, paid vacation days, personal days and paid time off.</li> </ul> | <p>and used as accrued – even for newly hired employees).</p> <ul style="list-style-type: none"> <li>The ESTA provides the employer is in compliance "if the employer provides any paid leave, that may be used for the same purposes <u>and under the same conditions</u> provided in this act and that is accrued in total at a rate equal to or greater than the rate described...."</li> <li>NOTE: The "under the same conditions" language is likely to prove tricky. 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.).</li> </ul> |
| <p><b>ACCRUAL</b></p>  | <ul style="list-style-type: none"> <li>The PMLA specifies employees would accrue one hour of paid sick leave for every 35 hours <i>worked</i>, up to 40 hours per benefit year -- but an "employer is not required to allow an eligible employee to accrue more than one hour of paid medical leave in a calendar week."</li> </ul>                             | <ul style="list-style-type: none"> <li>The ESTA requires employees to accrue one hour of paid sick leave for every 30 hours worked under the Act. (NOTE: There is no language capping accrual at one hour per calendar week.)</li> <li>Employees working for employers with fewer than 10 employees (very small businesses) would be entitled to use 40 hours of paid leave, 32 hours of unpaid leave.</li> <li><u>All</u> employees would be entitled to use 72 hours in a year. Employers can cap usage at 72 hours in a given year. Employer determines how to define "calendar year."</li> </ul>  |

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| <p><b>CAPS AND FRONT-LOADING TIME</b></p>          | <ul style="list-style-type: none"> <li>• Under the PMLA, an employer is not required to allow an eligible employee to use more than 40 hours of paid sick leave in a single benefit year or to carry over more than 40 hours of time from one benefit year to another.</li> <li>• Employers may front-load all 40 hours at the start of a benefit year for ease of compliance. Under the PMLA, this allows employers to avoid the carry-over requirements.</li> </ul>   | <ul style="list-style-type: none"> <li>• Under the ESTA, although the employer could limit use to 72 hours per year, all time must be carried over from year to year. (NOTE: No cap on the number of hours that must be allowed to carry over year to year.)</li> <li>• There is no option to front-load all required hours at the start of a calendar or benefit year.</li> </ul>  |
| <p><b>USE OF TIME (REASONS AND INCREMENTS)</b></p> | <ul style="list-style-type: none"> <li>• The PMLA specifies time “must be used in one-hour increments unless the employer has a different increment policy, and the policy is in writing in an employee handbook or other employee benefits document.”</li> <li>• Employees may take paid medical 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.</li> <li>• “Family member” is defined as: (1) A biological, adopted or foster child, stepchild or legal ward, or a</li> </ul> | <ul style="list-style-type: none"> <li>• Leave time can be used in “the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.”</li> <li>• The ESTA specifies “[f]or any employee whose hourly wage varies depending on the work performed, the ‘normal hourly wage’ means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.”</li> <li>• The ESTA generally tracks the PMLA as relates to reasons employees may take leave but adds meetings at a child’s school or place of care related to the child’s health or disability.</li> <li>• The ESTA adds to the definition of “family member” – extending the definition to “[a]ny other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.”</li> </ul> |

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|  | <p>child to whom the eligible employee stands in loco parentis; (2) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco parentis when the eligible employee was a minor child; (3) An individual to whom the eligible employee is legally married under the laws of any state; (4) A grandparent; (5) A grandchild; (6) A biological, foster, or adopted sibling.</p> |   |
| <p><b>PAYMENT OF TIME (RATE)</b></p>         | <ul style="list-style-type: none"> <li>The PMLA requires the employer to “pay each eligible employee...at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the minimum wage rate...An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay or gratuities in the calculation...”</li> </ul>   | <ul style="list-style-type: none"> <li>The ESTA specifies an “employer shall pay each employee...at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage...but not less than the minimum wage rate...For any employee whose hourly wage varies depending on the work performed, the ‘normal hourly wage’ means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.”</li> </ul>  |
| <p><b>NOTIFICATION AND DOCUMENTATION</b></p> | <ul style="list-style-type: none"> <li>The PMLA allows the employer to require the employee to comply with the employer’s usual and customary notification, procedural and documentation requirements.</li> </ul>  | <ul style="list-style-type: none"> <li>The ESTA requires seven days’ notice for use or, if not possible, “as soon as practicable.”</li> <li>An employer may not require an employee to search for or secure a replacement worker.</li> <li>An employer can only require documentation after three consecutive leave days. However, the employers shall not delay the commencement of earned sick time based on lack of documentation.</li> <li>Documentation that sick time is necessary will be limited to a simple and generic statement by a “health care professional” (defined to include traditional medical professionals as well as acupuncturists, massage therapists, veterinarians and more).</li> </ul> |

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|                               |   | <ul style="list-style-type: none"> <li>• Employers are responsible for any payment of the employee’s out-of-pocket costs associated with providing documentation, including “any costs charged to the employee by the health care provider for the specific documentation required by the employer.”</li> <li>• NOTE: In practice, the ESTA will provide employees with up to 72 hours of no-notice, intermittent leave time each calendar year. Employers’ hands will be tied (i.e., no discipline allowed; see “rebuttable presumption”) as it relates to situations where an employee is a “no call, no show” for up to three days. The ESTA language is ripe for abuse and will exacerbate existing staffing shortages and workforce issues.</li> </ul> |
| <b>RECORDKEEPING</b>          | <ul style="list-style-type: none"> <li>• Requires employers to retain records for one year.</li> </ul>  | <ul style="list-style-type: none"> <li>• Requires employers to retain record of hours worked and earned sick time taken for three years.</li> <li>• Creates a rebuttable presumption that specifies employers are in violation of the act if they do “not maintain or retain adequate records documenting the hours worked and earned since time taken by the employee.”</li> </ul>   |
| <b>REBUTTABLE PRESUMPTION</b> | <ul style="list-style-type: none"> <li>• The PMLA does not contain a rebuttable presumption.</li> </ul> | <ul style="list-style-type: none"> <li>• The ESTA specifies “an employer’s absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.”</li> <li>• The ESTA also creates a “rebuttable presumption” – specifying that it’s presumed that an employer has taken an “adverse personnel decision” if it takes an adverse action against an employee who has filed a complaint, opposed an employer’s policy or practice, or informed another person of his/her rights.</li> </ul>   |

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| <b>PRIVATE RIGHT OF ACTION</b> | <ul style="list-style-type: none"> <li>• The PMLA creates an administrative process through the Department of Licensing and Regulatory Affairs (LARA) for employees wishing to lodge complaints.</li> <li>• LARA must issue a determination upon conclusion of an investigation and inform the employer of its appeals rights.</li> <li>• LARA may assess payment of medical leave and back-pay. The law also ensures employees are aware of their rights and able to seek relief if they've been affected by a violation.</li> </ul> | <ul style="list-style-type: none"> <li>• The ESTA creates a private right of action (PRA), in addition to its administrative process through LARA. Remedies available to employees include reinstatement, attorney fees and all back pay and benefits (doubled as liquidated damages).</li> <li>• NOTE: The PRA creates massive liability exposure and the opportunity for abusive lawsuits class action litigation.</li> </ul> |
| <b>STATUTE OF LIMITATIONS</b>  | <ul style="list-style-type: none"> <li>• The PMLA requires claims to be filed with LARA within six months of an alleged violation.</li> </ul>   | <ul style="list-style-type: none"> <li>• The ESTA requires a violation to be filed within three years of an alleged violation (in court or with LARA or both).</li> </ul>   |
| <b>POSTERS</b>                 | <ul style="list-style-type: none"> <li>• Wage and hour posters required by law</li> </ul>   | <ul style="list-style-type: none"> <li>• Wage and hour posters required by law and will need to be updated! Order new posters today: <a href="https://www.michamber.com/publicationsstore/">https://www.michamber.com/publicationsstore/</a></li> </ul>   |
| <b>EFFECTIVE DATE</b>          |   | <ul style="list-style-type: none"> <li>• TBD</li> </ul>   |

## Minimum Wage

|                          | Current Law ( <a href="#">Public Act 368 of 2018</a> )   | What's Required Under the Michigan Supreme Court Ruling (" <a href="#">One Fair Wage</a> " Ballot Language, or " <a href="#">Improved Workforce Opportunity Wage Act</a> ") – effective 2/21/25   |
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| <b>MINIMUM WAGE RATE</b> | <ul style="list-style-type: none"> <li>• 2024: \$10.33</li> <li>• 2025: \$10.56</li> <li>• 2026: \$10.80</li> <li>• 2027: \$11.04</li> <li>• 2028: \$11.29</li> <li>• 2029: \$11.54</li> <li>• 2030: \$11.79</li> <li>• 2031: \$12.05</li> </ul> | <ul style="list-style-type: none"> <li>• Unclear what the increase will be as of 7/31/24. The Court's opinion says: "We are cognizant, after all, that nearly six years have passed since the Legislature adopted the Wage Act and that the \$10.00 starting point that the Wage Act envisioned for 2019 is not the same as \$10.00 in 2024. In keeping with the statute's plan to begin accounting for inflation by 2022, we hold that the state treasurer must use this opinion's publication date to calculate the inflation-adjusted rates for the</li> </ul> |

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|                               |  | <p>minimum hourly wage prescriptions provided in the [Act.] Thereafter, in accordance with the Wage Act’s original design, the state treasurer shall calculate the inflation-adjusted minimum wage as described in [the Act]. Because the minimum wage increases will go into effect in 2025, we will treat the years 2019 to 2022 as the years 2025 to 2028 (plus the necessary inflation adjustment) to reflect the statute’s graduated implementation. The inflation-adjusted minimum wage will commence correspondingly in 2029 (originally 2023) as set forth in [the Act.]”</p> |
| <b>PAUSING AN INCREASE</b>    | <ul style="list-style-type: none"> <li>• An increase in the minimum hourly wage rate as prescribed does not take effect if the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is 8.5% or greater for the calendar year preceding the calendar year of the prescribed increase.</li> </ul> | <ul style="list-style-type: none"> <li>• An increase in the minimum hourly wage rate as prescribed does not take effect if the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is 8.5% or greater for the calendar year preceding the calendar year of the prescribed increase.</li> </ul>  |
| <b>TIPPED EMPLOYEES</b>       | <ul style="list-style-type: none"> <li>• The rate is 38% of full minimum wage (but tipped employees must earn at least minimum wage when their tips are combined with the tipped minimum wage or the employer must pay the difference).</li> </ul>   | <ul style="list-style-type: none"> <li>• The Improved Workforce Opportunity Wage Act works to fully eliminate the tipped credit – but gradually. The exact step increases are unknown as of 7/31/24.</li> </ul>   |
| <b>INFLATIONARY INCREASES</b> | <ul style="list-style-type: none"> <li>• N/A</li> </ul>  | <ul style="list-style-type: none"> <li>• Every October, the State Treasurer shall calculate an adjusted rate based on the rate of inflation. “The increase shall be calculated by multiplying the otherwise applicable minimum wage by the 12-month percentage increase, if any, in the consumer price index for urban wage earners and clerical workers, CPI-W...”</li> <li>• The rate shall be published by Nov. 1 of the year it is calculated and will be effective Jan. 1 in the succeeding year.</li> </ul>   |
| <b>POSTERS</b>                | <ul style="list-style-type: none"> <li>• Wage and hour posters required by law</li> </ul>  | <ul style="list-style-type: none"> <li>• Wage and hour posters required by law and will need to be updated! Order new posters today: <a href="https://www.michamber.com/publicationsstore/">https://www.michamber.com/publicationsstore/</a></li> </ul>   |
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