



# Preparing For Change: Earned Sick Time Act and Minimum Wage Law 2.0

Overview and Highlights

Feb. 24, 2025



**MICHIGAN**  
**CHAMBER**  
of Commerce

PROTECT. CONNECT. **STRENGTHEN.**

# What Happened

- **MI Chamber urging action or months**
- Legislature adopted **changes** on the eve of the Feb. 21 deadline
  - [HB 4002](#), [SB 8](#)
- **Bipartisan** votes:
  - ESTA –
    - Senate: 26-10, House: 81-29
  - Minimum wage (MW) vote –
    - Senate: 20-12, House: 69-40
- Kudos owed to **Speaker Hall**





# Key Takeaways

- Changes are limited in scope...but mostly **favorable**
- Fixed the **activist Supreme Court's** decision
- Goals:
  - Address ambiguities, **administrative challenges** and unintended consequences of ESTA
  - Make minimum wage changes more **manageable** for bars and restaurants
- **Effective dates:** ESTA - 12:02 a.m. on 2/21/25; MW - 1:08 on 2/21



# SUPPORT COMMONSENSE CHANGES TO THE EARNED SICK TIME ACT (ESTA)

PLEASE SUPPORT HOUSE BILL 4002: LEGISLATION TO LESSEN THE HARM OF THE MICHIGAN SUPREME COURT'S DECISION ON PAID LEAVE AND MAKE IMPLEMENTATION WORKABLE FOR EMPLOYERS AND EMPLOYEES ALIKE.

Left unchanged, the sweeping new Earned Sick Time Act (ESTA)—which is slated to go into effect on Feb. 21—would be one of the most far-reaching and stringent paid time off laws found in any state. Here's why:

- Will force businesses of all sizes and types to rethink their approach to paid time off (PTO). Even if businesses offering 72 hours or more of leave to employees today will need to make significant changes.
- There are no exemptions—even for small businesses—and all employees must be covered: full-time, part-time, seasonal, temps, paid interns, and maybe even independent contractors.
- The 72 hours of mandatory leave can be used intermittently and without advanced notification to the business, thereby exacerbating staffing shortages.
- All unused time must roll over from year to year with no cap.
- ESTA is a litigation nightmare, allowing employees to go right to court and automatically assuming the employee's side for unfavorable personnel actions.

## OUR ASK

- Exempt small businesses and certain classifications of workers.
- Allow employers to frontload time and avoid tracking and carryover requirements.
- Give businesses more flexibility to combine earned sick time with other PTO.
- Avoid a one-size-fits-all approach to advanced notice and increments of time, recognizing that different businesses have different needs.
- Strike the private right of action and rebuttable presumptions, leaving enforcement and penalties to the state.



*House Bill 4002 finds a workable solution and avoids a scenario where businesses across Michigan are forced to make drastic and costly changes to their PTO policies. We hope we can count on your support!*

## ESTA – Five Key Changes:

- Make **less disruptive**
- Exempt **small businesses** and certain workers (part-time workers, seasonal employees, other workers).
- Allow employers to **frontload** time and **avoid tracking and carryover** requirements.
- Give businesses **more flexibility to combine** earned sick time with other PTO.
- Avoid a one-size-fits-all approach to **advanced notice and increments of time**, recognizing that different businesses have different needs.
- Strike the **private right of action and rebuttable presumptions**, leaving enforcement and penalties to the state.



# Top Things to Know About ESTA 2.0

- **Very few outright exemptions** for organizations (regardless of size) or employees
- **Small businesses treated differently** (40 hours paid vs. 72 paid) and have more time to comply (10/1/25)
- Keeping **one PTO bank allowed**
- **Frontloading is allowed** (avoids tracking, carryover)
- New default for usage is **1-hour increments**
- **No private right of action or rebuttable presumption**
- Notice can be **seven days if foreseeable**, can have **written policy for unforeseeable**
- **No-call, no-shows can be dealt** with if you have a written policy
- Rate of pay is greater of **normal hourly, base wage or min. wage**



# Definition of Employee

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>No exemptions</li></ul>	<p><b>Limited exemptions</b>, including:</p> <ul style="list-style-type: none"><li><b>Some gig</b> – Those working accordance with a policy that allows the individual to scheduled his/her own hours and has a policy that prohibits the employer from taking adverse personnel action if the individual does not schedule a minimum number of working hours</li><li><b>Unpaid trainees or unpaid interns</b></li><li><b>Student workers</b> – Specifically, individuals employed in accordance with the Youth Employment Standards Act, MCL 409.101-.124</li></ul> <p>Applies to employees who are <b>physically located in Michigan</b> regardless of employer location</p>

**LEO FAQ:** 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.

# Definition of Employer

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• No exemptions</li><li>• Small businesses (less than 10): 40 paid, 32 unpaid</li></ul>	<ul style="list-style-type: none"><li>• <b>No exemptions</b> for employer size...<b>or nonprofits</b><ul style="list-style-type: none"><li>○ Includes “any person, firm, business, educational institution, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals.”</li></ul></li><li>• <b>Small businesses</b> (10 or less) may give less time and <b>have until 10/1/25</b><ul style="list-style-type: none"><li>○ Count all employees (full-time, part-time, or temporary basis [including those working through a temp or staffing agency or similar entity]); <b>all employees within the U.S. or territories need to be counted</b></li><li>○ NOT considered a small business is maintain “<b>more than 10 employees on its payroll during any 20 or more calendar workweeks in either the current or immediately preceding calendar year</b>” - can’t become a small business again until meet requirements</li></ul></li><li>• <b>New (small) businesses</b> have wiggle (3 years)<ul style="list-style-type: none"><li>○ “If a small business did not employ an employee on or before February 21, 2022, the small employer is not required to comply with this act until 3 years after the date that the employer first employs an employee.”</li><li>○ <u>More clarification is needed from the state on this option</u></li></ul></li></ul>

# Accrual, Increments

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• 1 hour for every 30 hours worked</li><li>• May accrue more than 72 hours annually but can cap usage at 72 hours/year<ul style="list-style-type: none"><li>◦ Small businesses (less than 10): 1 hour for every 30 hours worked – 40 hours paid, 32 hours unpaid</li></ul></li><li>• No cap on carryover</li><li>• Use in 1-hour increments or the smallest increment that the employer uses to account for absences or use of other time</li></ul>	<ul style="list-style-type: none"><li>• <b>1 hour for every 30 hours <u>worked</u></b></li><li>• May accrue <i>more than</i> 72 hours annually...but employer <b>can cap usage at 72 hours/year</b><ul style="list-style-type: none"><li>◦ <b><u>Small businesses</u></b> (10 or less): 1 hour for every 30 hours worked – can cap <i>usage</i> to <b>40 hours/year</b> (no unpaid time required)</li></ul></li><li>• Employees <b>may use earned sick time as time is accrued, regardless of paid period</b> (change for many organizations!)</li><li>• Use in <b>1-hour increments</b> or smallest increment used to account for absences (can elect smaller?)</li><li>• Orgs decide how to define “year” (consecutive 12-month period)</li></ul>



# Frontloading

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Doesn't explicitly allow for frontloading</li><li>• Don't avoid accrual, tracking or carryover requirements</li></ul>	<ul style="list-style-type: none"><li>• Alternative to accrual method, <b>may frontload 72 hours (40 hours for small businesses)</b></li><li>• <b>No carryover required..only need to track number of hours employees have used annually</b></li><li>• If <b>frontloading part-time employees</b>, must:<ul style="list-style-type: none"><li>• Provide a written notice on how many hours the employee is expected to work in a year at the time of hire</li><li>• Amount frontloaded is, at a minimum, proportional to the EST that the employee would accrue if they worked all the hours expected</li><li>• Provide additional hours if underestimated</li></ul></li></ul>

# Waiting Period (New Employees)

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• 90 days</li></ul>	<ul style="list-style-type: none"><li>• If new employee, hired on or after February 21, 2025, may require to wait until the <b>120th calendar day</b> “after commencing employment” before using accrued time<ul style="list-style-type: none"><li>• Helpful to seasonal employers!</li></ul></li><li>• Employees <b>reemployed</b> within the two-month period must have unused time reinstated, be able to use immediately (unless paid out)</li></ul>

# One PTO Bank

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>Highly problematic because specifies an employer can combine ESTA with PTO but only if it can “be used for the same purposes <u>and under the same conditions</u> provided under this act and that is accrued at a rate equal to or greater than the rate described” in the ESTA</li></ul>	<ul style="list-style-type: none"><li>Greater flexibility!</li><li>In compliance if: (1) provide the employer’s employees with <b>PTO not less than the same amounts of time off as provided under ESTA (72/40 hours) and (2) may be used for a purpose described under the act OR any other purpose</b></li><li>The employer is not required to allow an employee to use PTO for a purpose described in ESTA in an amount that exceeds the amounts of time off provided under the act</li></ul>

**LEO FAQ: 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?**  
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.



# Rate of Pay

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>Unclear what to use to calculate</li></ul>	<ul style="list-style-type: none"><li>Earned sick time must be paid at a pay rate equal to the greater of either (i) an employee's <b>normal hourly wage or base wage</b> or (ii) the Michigan <b>minimum wage rate</b> then in effect under MCL 408.934 as amended (\$12.48/hour in 2025)</li><li>Clarifies that an employee's normal hourly rate (i.e., the rate used to calculate ESTA pay) <b>does not include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities</b></li><li>Employees may use ESTA for <b>paid work hours</b></li></ul>

# Notice: Foreseeable, Unforeseeable

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Up to seven days if time off is foreseeable</li><li>• If time off is unforeseeable, as soon as practicable</li></ul>	<ul style="list-style-type: none"><li>• <b>Foreseeable: Up to seven days</b> advanced notice</li><li>• <b>Unforeseeable:</b> May require the employee to give notice in either of the following manners:<ol style="list-style-type: none"><li>1. <b>As soon as practicable or</b></li><li>2. <b>In accordance with the employer's policy</b> on requesting/using sick time or leave <b>IF:</b><ol style="list-style-type: none"><li>a. On the date of hire, or the 2/21/25, whichever is later, provides the employee with a <b>written copy of the policy that includes procedures</b> for how the employee must provide notice and</li><li>b. That <b>notice requirement allows the employee to provide notice after the employee is aware of the need for the EST</b></li></ol></li></ol></li></ul>

# Notice, Part Two

ESTA	HB 4002
<ul style="list-style-type: none"><li>• Not contemplated</li></ul>	<ul style="list-style-type: none"><li>• An employer requiring notice for sick time that is not foreseeable “shall not deny an employee’s use of earned sick time that is not foreseeable if...the employer did not provide a written policy to the employee...[and/or]...the employer made a change...and did not provide notice of the change within 5 days after the change.”</li></ul>

## **LEO FAQ: Can an employee no-call, no-show for three days without recourse?**

Generally, no. Under an extreme circumstance, for example the employee is incapacitated and unable to give notice. The employee must provide notice as soon as practicable. The employee may be disciplined following employer’s policy and procedures.



# Carryover

ESTA	HB 4002
<ul style="list-style-type: none"><li>• Can cap usage at 72 hours/year but all time must be carried over from year to year</li></ul>	<ul style="list-style-type: none"><li>• May cap carryover at 40/72 hours (small vs. everyone else)<ul style="list-style-type: none"><li>◦ Can select a higher limit</li><li>◦ Big win!</li></ul></li></ul>

**LEO FAQ: May an employer pay out unused sick leave annually in lieu of carrying over unused hours to the next year, or at termination without providing the hours at reemployment?**

Yes, if the employer uses the accrual method for calculation of earned sick time, the employer can choose to create a policy that allows employees to be paid out or carry over up to 40 hours, for small business, and 72 hours for other employers. The employer may pay out at termination or separation.

# Documentation

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• May require after three consecutive days</li><li>• Employer pays</li></ul>	<ul style="list-style-type: none"><li>• May require documentation <b>after three consecutive days (4<sup>th</sup>!)</b> – cannot delay usage based on not having it</li><li>• Must be <b>submitted within 15 days</b> of the request</li><li>• Cannot require the documentation to explain the nature of the illness or the details of the violence but LEO says may ask questions to determine if leave meets the eligible uses</li><li>• The employer is responsible for <b>paying all out-of-pocket expenses the employee incurs in obtaining the documentation.</b><ul style="list-style-type: none"><li>○ If the employee does have health insurance, the employer is responsible for paying <u>any</u> costs charged to the employee by the health care provider for providing the specific documentation required by the employer</li></ul></li></ul>

# Uses

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Employee's or the employee's family member's <b>mental or physical illness, injury or health condition</b>; medical diagnosis, care or treatment; <b>preventative medical care</b></li><li>• <b>Domestic violence or sexual assault</b></li><li>• Meetings at a child's school or place of care related to above</li><li>• Closure of place of business/school/place of care due to a public health emergency</li></ul>	<ul style="list-style-type: none"><li>• No significant changes from ESTA 1.0</li></ul>

**LEO FAQ: Can the employer make an employee use their sick leave before using other types leave?**

No, an employee must request the use of Earned Sick Time.



# CBAs

ESTA	<u>HB 4002</u>
	<ul style="list-style-type: none"><li>• <b>Some employers with CBAs having breathing room:</b> “If...covered by a collective bargaining agreement in effect on the effective date of this act <u>and the collective bargaining agreement conflicts with this act</u>, this act applies beginning on the stated expiration date...”</li><li>• <b>Employment contracts:</b> If employees are covered by a “contract, not including an employer policy signed by the employee...act applies beginning on the stated expiration date...”<ul style="list-style-type: none"><li>○ Very limited ability to use (e.g., signed before 12/31/24)</li></ul></li></ul>

# CBAs: What LEO is Saying

## LEO [FAQ](#): What effect does the ESTA have on collective bargaining agreements on or after February 21, 2025?

- **If the collective bargaining agreement includes terms regarding sick time or sick leave benefits:** Provided that the collective bargaining agreement includes terms related to sick leave, sick time, PTO with uses for sick time, or a similar benefit, the collective bargaining agreement terms apply, even if the benefit is less than what is required by the ESTA, until the agreement expires or is renewed, extended or otherwise renegotiated. The agreement also applies in situations where the agreement expressly excludes sick leave benefits.
- **If the collective bargaining agreement is silent:** Employees covered by a collective bargaining agreement that is completely silent on sick leave, *either for the entire unit or for specific classifications covered by the agreement*, are covered by the ESTA and **begin accruing benefits on February 21, 2025**, unless they are a small employer as outlined above.

# Replacement Workers, FLSA Exempt

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Can't require an employee to search for a replacement</li><li>• If exempt from overtime under FLSA assumed to work 40 hours/week unless normal workweek is less (treat as one hour per 30 hours worked)</li></ul>	<ul style="list-style-type: none"><li>• Can't require an employee to search for a replacement</li><li>• If exempt from overtime under FLSA assumed to work 40 hours/week unless normal workweek is less (treat as one hour per 30 hours worked)</li></ul>

# Personnel Actions

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• An employer or any other person “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>• “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></ul>	<ul style="list-style-type: none"><li>• “An employer’s <b>absence control policy must not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action</b>” BUT “an employer <b>may take adverse personnel action against an employee if the employee uses earned sick time for a purpose other than [an allowable] purpose or violates the notice requirements under this act</b>”</li><li>• “<b>Shall not take retaliatory personnel action or discriminate</b> against an employee <b>because the employee has exercised a right</b> protected under this act”<ul style="list-style-type: none"><li>○ Rights include right to use EST, to file a complaint, inform a person about an alleged violation, to cooperate with the state, to inform others about their rights</li></ul></li></ul>

# Rebuttable Presumption

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>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>	<ul style="list-style-type: none"><li><b>Struck – huge win</b></li></ul>



# Private Right of Action

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Allows employees who believe they have been aggrieved to go straight to court through the creation of a private right of action (PRA). There is also a state administrative process</li><li>• Remedies available to employees include reinstatement, attorney fees and all back pay and benefits (doubled as liquidated damages)</li><li>• Creates a massive liability exposure and the opportunity for abusive lawsuits class action litigation</li></ul>	<ul style="list-style-type: none"><li>• <b>Struck – huge win</b></li></ul>

# Statue of Limitations, Penalties

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Law can be enforced by the state and employee can file a civil action</li><li>• Can file a claim with the state within three years “of when the employee <i>knew of</i> the violation”</li><li>• \$1,000 per violation if take retaliatory personnel action against an employee (former)</li><li>• Eight times normal hourly wage penalty if fail to provide EST</li><li>• \$100 if willfully violate notice or posting requirement</li></ul>	<ul style="list-style-type: none"><li>• <b>Enforcement rests with state</b> (can bring civil action if fail to obtain voluntary compliance)</li><li>• Must keep <b>records</b> (hours worked, time taken) for 3 years</li><li>• Can file a claim with the state within three years after the violation</li><li>• <b>\$1,000 per violation if take retaliatory personnel action</b> against an employee (former)</li><li>• <b>8x normal hourly wage penalty if fail to provide EST</b></li><li>• \$100 if willfully violate notice or posting requirement</li></ul>

# Other Must-Dos

ESTA	<u>HB 4002</u>
<ul style="list-style-type: none"><li>• Posters</li><li>• Written notice to employees</li><li>• Retain records for three years</li></ul>	<ul style="list-style-type: none"><li>• <b>Posters (also applies to minimum wage law!)</b></li><li>• <b>Notice to employees at date of hiring or March 22, 2025:</b><ul style="list-style-type: none"><li>○ Amount required to be provided</li><li>○ Choice on how you'll calculate a year</li><li>○ Terms EST may be used</li><li>○ That retaliatory personnel action for requesting/using time is prohibited</li><li>○ Right to file a complaint with the state</li></ul></li><li>○ <b>BOTH must be in English, Spanish and any language is the first language spoken by not less than 10% of the employee's workforce</b> (if state has translated)</li></ul>



## Michigan Needs Your Support to Pass House Bill 4001

### What is House Bill 4001?

House Bill 4001 is bipartisan, compromise legislation designed to responsibly increase the topline minimum wage while keeping Michigan one of 43 states that allow the use of a tipped minimum wage, commonly referred to as the "tip credit."

### Why should you support it?

**1** If House Bill 4001 is not passed by the end of the year, elimination of the tip credit will be an economic disaster for Michigan's restaurant industry and bad for Michigan's economy overall.\*

- **40,000-60,000 restaurant industry jobs will be lost** as 2/3 of restaurant operators lay off employees.
- **1 in 5 full-service restaurants - the equivalent of 1,000 independent restaurants - would close permanently.** Restaurant operators report a pandemic-like event of restaurant closures.



**2** The elimination of the tip credit in Michigan is overwhelmingly opposed by the very restaurant servers and bartenders that an out-of-state interest group in favor of tip credit elimination purports to help: \*\*



- 83% of servers prefer the status quo.
- Michigan servers make nearly \$30 per hour on average under the current system.
- 79% of servers fear their jobs will be eliminated if the tip credit is eliminated.

# Minimum Wage Changes:

- **Restore the tipped minimum wage**

# Minimum Wage 2.0

Issue	Court's Decision	<u>SB 8 (as signed by the Governor)</u>
<b>Minimum wage rate</b>	Increases the minimum wage rate from \$10.56/hour (current) to: <ul style="list-style-type: none"><li>• \$12.48 Feb. 21, 2025;</li><li>• \$13.29 in 2026;</li><li>• \$14.16 in 2027;</li><li>• \$14.97 in 2028;</li><li>• CPI-W in 2029 +</li></ul>	Increases the minimum wage rate from \$10.56/hour (current) to: <ul style="list-style-type: none"><li>• <b>\$12.48 Feb. 21;</b></li><li>• \$13.73 Jan. 1, 2026;</li><li>• <b>\$15 Jan. 1, 2027</b></li></ul> <b>Inflationary increases</b> would follow Jan. 1, 2028, and each subsequent year (Midwest CPI)



# Minimum Wage 2.0

Issue	Court's Decision	SB 8 (as signed by the Governor)
<b>Tipped wage</b>	<ul style="list-style-type: none"><li>• 48% in 2025</li><li>• 60% in 2026</li><li>• 70% in 2027</li><li>• 80% in 2028</li><li>• 90% in 2029</li><li>• 100% in 2030</li></ul>	<ul style="list-style-type: none"><li>• <b>Stays at 38% in 2025</b></li><li>• 40% in 2026</li><li>• 42% in 2027</li><li>• 44% in 2028</li><li>• 46% in 2029</li><li>• 48% in 2030</li><li>• <b>50% in 2031 – CAP</b></li></ul>

- **\$2,500 fine on employers fail to ensure tipped workers get paid at least minimum wage**

# Compliance Tools – More updates Coming!

<b>FAQs: Earned Sick Time Act</b> <small>UPDATED 2-21-25</small> <a href="#">Download</a>	<b>Legal Resources</b> <a href="#">Download</a>
<b>One-Pager: Top Things Employers Need to Know</b> <small>Being Updated – Coming Soon</small>	<b>Overview: What Needs to Change</b> <small>Being Updated – Coming Soon</small>
<b>ESTA Compliance Worksheet</b> <small>Being Updated – Coming Soon</small>	<b>ESTA Resource List</b> <small>Being Updated – Coming Soon</small>
<b>Sample ESTA Employee Handbook Policy</b> <small>Being Updated – Coming Soon</small>	<b>Sample ESTA Employee Notification Letter</b> <small>Being Updated – Coming Soon</small>

Chamber Toolkit:  
[michamber.com/toolkit](http://michamber.com/toolkit)

LEO FAQ:  
[bit.ly/3XcZFNU](http://bit.ly/3XcZFNU)

Compliance Posters:  
[michamber.com/posters](http://michamber.com/posters)