



## Earned Sick Time Act Audience Questions

**Q:** What employers are covered by the Earned Sick Time Act?

**A:** All Michigan employers that have one or more employees are covered by the Act. The only exception is the U.S. government, which is not a covered employer under the ESTA.

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**Q:** Does the Earned Sick Time Act mean that elected officials are eligible to earn paid sick time? What about volunteers?

**A:** No. The ESTA applies to *employees*, not elected officials, volunteers, independent contractors and others who are not employed by an employer covered by the Act.

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**Q:** Can an employer have one plan (for example, a paid time off policy) where employees accrue paid time off in the amounts required by the ESTA, or do employers need to establish a separate bank for paid sick time?

**A:** Yes, an employer can have one plan, such as a PTO policy, as long as the plan provides at least the same amounts of time provided in the ESTA, and the employer allows employees to use the time for the same purposes and under the same conditions provided by the Act.

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**Q:** Currently, our employees can use paid sick time in four- or eight-hour increments. Is this allowed under the ESTA?

**A:** No. The ESTA specifies that earned sick time may be used in the smaller of hourly increments or the smallest increment of time used by the employer's payroll system for absences or use of other time. If, for example, your payroll system for absences tracks time in tenths of an hour (six minutes), then employees would be permitted to use that same increment for use of earned sick time.

**Q:** Our company often uses independent contractors who come to us through an agency. Do we need to provide them paid sick time under the ESTA?

**A:** No, if they are correctly classified as independent contractors, your company will not be required to provide them paid sick time because the ESTA applies to employees.

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**Q:** When does ESTA go into effect?

**A:** The ESTA takes effect on Feb. 21, 2025.

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**Q:** When must employees start accruing earned sick time at the levels required by the ESTA?

**A:** Accrual begins on Feb. 21, 2025 or upon commencement of employment, whichever is later. Employers may choose to allow accrual to begin sooner than Feb. 21, 2025 if they wish.

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**Q:** Can employers provide more time than the ESTA requires (e.g., 80 hours per year) so long as they notify employees that the time can be used for the reasons stated in the law?

**A:** Yes, employers can provide more time than the ESTA requires, as long as they permit employees to use time for the reasons stated in the Act and under the same conditions.

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**Q:** Can earned sick time be frontloaded, or must it accrue at the one hour per 30 hours worked rate set forth in the ESTA?

**A:** Yes, employers may “frontload” (i.e., award sick time before it is earned) if they choose to because the ESTA does not prohibit them from doing so. However, employers who frontload time must take care to ensure the earned sick time still meets the accrual and use requirements set forth in the law. That is, the time an employee receives must still amount to at least one hour of earned sick time for every 30 hours worked, and they must be allowed to use the time for the reasons set forth in the law.

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**Q:** What about salaried employees who do not clock in or out? Can their earned sick time be frontloaded based on their scheduled hours?

**A:** Yes. The ESTA presumes that an employee who is exempt from overtime requirements under the Fair Labor Standards Act works 40 hours in each workweek for purposes of earned sick time accrual unless their normal workweek is less than 40 hours.

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**Q:** Can an employee use earned sick time under the ESTA while they are on leave under the Family and Medical Leave Act?

**A:** Yes. Reasons that qualify for leave under the FMLA are also qualifying reasons for using earned sick time under the ESTA. Thus, earned sick time under the ESTA can be used concurrently with FMLA leave, which affords employees pay during at least a portion of their FMLA leave of absence, depending on the length of that leave.

**Q:** If we create a separate bank for earned sick time under the ESTA, do we have to pay employees for unused time upon termination of employment?

**A:** The ESTA does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment. To determine whether the payment of earned sick time and other fringe benefits upon separation will be required, employers should look to any governing contract or policy, such as a collective bargaining agreement or employer policy.

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**Q:** Does the ESTA require us to provide 72 hours of earned sick time on an employee's first day?

**A:** No. The ESTA does not mandate that new employees receive 72 hours of earned sick time on their first day of work. Rather, the law specifies that new employees must begin accruing earned sick time upon commencement of employment. The law also requires that employees be allowed to use earned sick time as it is accrued, except that employers may require employees to wait 90 calendar days before they begin using accrued sick time.

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**Q:** Can employers require an employee to provide notice that they intend to use earned sick time?

**A:** If the need for earned sick time is foreseeable, an employer may require advance notice not to exceed seven days prior to the date the earned sick time is to begin, of the intention to use the earned sick time.

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**Q:** What if the need to use earned sick time is not foreseeable? What sort of notice can employers require?

**A:** If the need for earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as "practicable."

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**Q:** When can employers require employees to provide medical documentation to support their need to use earned sick time?

**A:** For earned sick time of more than three consecutive days, employers may require "reasonable documentation" that the sick time has been used for a purpose set forth in the ESTA. Upon request, employees must provide the documentation in a timely manner. Documentation gathered should not include a description of the illness or details of the violence necessitating the use of earned sick time. Also, if an employer requires documentation, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. Finally, an employer may not delay the commencement of earned sick time on the basis that it has not yet received documentation.

**Q:** What are the carry over amounts for unused earned sick time under the ESTA?

**A:** All unused earned sick time gets carried over from one year to the next, but employers may limit annual use to no more than 72 hours.

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**Q:** What are the recordkeeping requirements for employers under the ESTA?

**A:** Employers must retain records that document the hours worked and earned sick time taken by employees for at least three years. If a question arises as to whether an employer has violated an employee's rights under the ESTA and the employer does not maintain or retain adequate records, the law imposes a presumption that the employer violated the Act.

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**Q:** What about employees who are covered by a collective bargaining agreement? How does the ESTA affect their accrual and use of earned sick time?

**A:** If employees are covered by a CBA on the date the law takes effect Feb. 21, 2025, the ESTA applies beginning on the stated expiration date of that agreement, regardless of any statement in the agreement that it continues in force until a future date or event or the execution of a new CBA. For example, if a CBA expires on June 30, 2025, the ESTA will take effect as to the employees covered by the agreement on that date. From that point forward, any agreements the employer and union reach concerning earned sick time would need to meet or exceed the standards set forth in the ESTA.

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