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Temperature Check

Is Your Company Ready for Michigan's Paid Sick Leave Act?

Presented by
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Today's Presenter



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Temperature Check




Today's Discussion

- Brief History
- FAQs
- Key Reminders
- Policy Recommendations
- What to Expect in 2019 and Beyond





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Brief History

- “Earned Sick Time Act” – citizen-initiated measure
 - Slated to appear on the November 2018 ballot
- Sept. 5, 2018: Michigan’s Legislature enacted (in addition to the Improved Workforce Opportunity Act re: minimum wage increases)
- But why? Legislature only needed a “simple majority” vote to amend the laws.
- Amended law signed by Gov. Snyder on **Dec. 13, 2018.**



Is my Business Covered?

- Applies to: any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that **employs 50 or more individuals**. Employer **does not include** the U.S. government, another state or a political subdivision of another state.
- All employees must be counted in determining whether you meet the 50-employee threshold, including part-time and full-time employees and employees excluded from coverage under the Act.



What Employees are Eligible for Paid Leave?

- Act applies to: “any individual engaged in service to an employer in the business of the employer and from whom the employer is required to withhold for federal income tax purposes” ... with **12 specific employee exemptions** ...



What are the Exemptions?

- An individual who is **exempt from overtime requirements** under section 13(a)(1) of the FLSA (i.e., “any employee employed in a bona fide executive, administrative, or professional capacity or in the capacity of outside salesman”)
- An individual covered **under a private sector collective bargaining agreement that is in effect**
- An individual whose primary work location is not in this state
- An individual who is being paid the youth minimum wage or training wage under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b



What are the Exemptions?

- **Temporary employees** as described in section 29(1)(l) of the Michigan employment security act, MCL 421.29
- **Seasonal employee** employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer
- Variable hour employee as defined in 26 CFR 54.4980H-1
- **Part-time employee** who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year



What are the Exemptions?

- Individual employed by the U.S. government, another state or a political subdivision of another state
- Individual employed by an air carrier as a flight deck or cabin crew member that is subject to Title II of the Railway Labor Act, 45 USC 151 to 188
- Employee as described in section 201 of the Railway Labor Act, 45 USC 181
- Employee as defined in section 1 of the Railroad Unemployment Insurance Act, 45 USC 351



How Does Paid Sick Time Accrue?

- One hour of leave for every 35 hours worked (not including vacation/holiday)
 - Up to a **maximum of 40 hours** per benefit year
 - Benefit year: any consecutive 12-month period used by an employer to calculate an eligible employee's benefits
 - Anniversary date, fiscal year, calendar, etc.
- Employers are **not required** to allow an employee to accrue more than one hour of leave per calendar week.



What is the Applicable Pay Rate for Paid Leave?

- Employers must pay an hourly rate equal to **greater of:**
 - Normal hourly wage or base wage for that eligible employee or the minimum wage rate (\$9.45/hour as of 03/29/19)
- Employers are not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay or gratuities in hourly rate calculation.
- Employers **do not** need to payout unused accrued time.



What About Part-time Employee Accrual?

- Accrual is the same for all employees (one hour for every 35 hours worked).
- Employees can provide part-time employees one hour for workweek.
- Employees can choose to carry over time until employee reaches 35 hours and accrues one hour.



Does Accrued Time Rollover?

- An employer is not required to allow eligible employees to accrue more than 40 hours per benefit year.
- Employees must be allow eligible employees to carry over up to 40 hours of unused accrued time from one benefit year to the next **unless** the employer “front loads” the time by offering 40 hours at the beginning of the benefit year.
- Even with carry over, maximum time required to allow is 40 hours.



Can we Limit the Time Increments of Leave Used?

- Act provides that paid leave “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.”
- Limitations, therefore, must be in writing.



Under What Scenario(s) can Employees use Paid Leave?

- Physical or mental illness, injury, or health condition of employee or his or her family member
- Medical diagnosis, care, or treatment of employee or employee’s family member
- Preventative care of employee or his or her family member



Under What Scenario(s) can Employees use Paid Leave?

- If employee or his or her family member is victim of domestic violence or sexual assault
- For closure of employee's place of business by order of public official
- To care for a child whose school or place of care has been closed by order of a public official due to a public health emergency
- Because of employee or his or her family member's exposure to communicable diseases that would jeopardize health of others



Under What Scenario(s) can Employees use Paid Leave?

- For medical care or psychological or other counseling
- To receive services from victim services organization
- To relocate
- To obtain legal services
- To participate in any civil or criminal proceedings related to or resulting from domestic violence or sexual assault.



How does This Impact our PTO Policy?

- Employers can offer a bank of PTO, including paid personal days, vacation time and paid medical leave.
- Where paid medical leave is combined with other forms of PTO, the time accrual and usage rules still apply.
 - i.e., cannot circumvent those requirements by referencing general PTO bank and pre-law rules



What do Eligible Employees Need to do to Request Paid Leave?

- Employer can require employees to comply with “usual and customary notice, procedural and documentation requirements for requesting leave.”
- Employer can set particular policy regarding requirement to provide doctor’s note/medical certification.
 - Must provide employees with at least three days to provide requested documentation



When do we Need to Start Accrual?

- Law becomes effective March 29, 2019
- Accrual must begin upon commencement of employee’s employment or March 29, 2019, whichever is **later**



What Else do I Need to do now?

- Ensure your company is ready for the recordkeeping requirements (must retain records for at least one year, documenting hours worked and paid leave taken by eligible employees.
- Prepare for posting requirements (similar to minimum wage poster).
- Discuss whether “front loading” makes sense for your business and set plan for accrual/measurement in place.



Key Reminders

- Employees covered by **current** CBA are not eligible for paid leave.
- White collar exempt employees are **not** eligible for paid leave.
- Act only applies to certain employers.
 - Make sure *all* employees (not just eligible) are counted.
- Domestic violence is qualifying reason for leave.



Policy Recommendations

- Describe PMLA.
- Provide description of who is eligible and who is not.
- Explain company's accrual methods.
- Explain carry-over/payout process (if applicable).
- Explain increment policy.
- Confirm notice/verification requirements.
- Direct any/all questions to HR/particular person who is knowledgeable regarding PMLA.

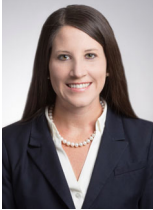


What Else Might Happen?

- *Potential* constitutional challenge
 - Proponents of ballet committees have said they are “exploring” challenges to the PMLA.
 - Content that “lame-duck laws” are unconstitutional.
- Given tenuous nature of challenge, best to proceed **full steam ahead** and prepare your company and employees accordingly!



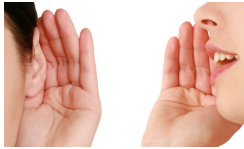
Questions?



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- FMLA/ADA Basics – May/June