Legislative Analysis

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EARNED SICK TIME AMENDMENTS

House Bill 4002 as enrolled
Sponsor: Rep. Jay DeBoyer
House Committee: Select Committee on Protecting Michigan Employees and Small Businesses
Senate Committee: Regulatory Affairs [Discharged]
Revised 2-27-25

(Enacted as Public Act 2 of 2025)

SUMMARY OF THE BILL:

House Bill 4002 would amend the Earned Sick Time Act to modify the terms under which employers are required to provide paid sick time to employees. The Earned Sick Time Act was an initiative petition that was passed by the legislature in 2018 and then substantially amended at the end of that year.[1] (See **Background**, below.) In July 2024, the Michigan Supreme Court (MSC) ruled that it is unconstitutional for the legislature to adopt proposed ballot measures and amend them in the same legislative session. Accordingly, the court voided the later 2018 amendments and restored the Earned Sick Time Act as originally enacted. The MSC-revived version took effect February 21, 2025, and is the version of the act the bill would amend.[2]

Generally speaking, this summary outlines the changes the bill would make to the law as effective through February 20, 2025—that is, the terms "currently" and "current law," used here, refer to that version of the act, and not to the version revived under the MSC decision. Descriptions of, and comparisons to, the MSC-revived version of the act are flagged as such throughout. In addition, following the description of the bill, this summary describes provisions of the MSC-revived act that were not included in the bill, but that became law on the same day the bill was enrolled, in comparison with the previously effective version of the act.

Defining employer and employee

The act currently requires ***employers*** to provide ***eligible employees*** with paid sick time in amounts and under conditions as described below. The bill would change the definition of *employer* and define and use the term *employee* instead of *eligible employee*.

Currently, ***employer*** means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. It does not include the United States government, another state, or a political subdivision of another state.

The bill would instead define ***employers*** as those employing one or more person (the bill proposes some separate provisions for small businesses, described below). The bill also would remove the language specifically exempting other states or the political subdivisions of other states. It would retain the U.S. government exemption. Finally, the bill would remove nonprofit

[1] The subsequent amendments changed the act's name to the Paid Medical Leave Act. The name reverted to the Earned Sick Time Act on February 21, 2025. For simplicity, this document will use the term *earned sick time*.

[2] For information related to the law through February 20, 2025, see: https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act/pmla For information related to the law as effective February 21, 2025, see: https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/paid-medical-leave-act

agencies from the above definition of employer, so that those agencies would no longer be *specifically* considered employers subject to the act. However, although the bill would no longer expressly include these agencies, it also does not expressly exempt them (as it does the federal government), so they would still be subject to the act (i.e., by virtue of being a "person," "corporation," or "other entity").

Under the bill, then, ***employer*** would mean any person, firm, business, educational institution, corporation, limited liability company, government entity, or other entity that employs one or more individuals. It would not include the United States government. [Apart from removing the reference to nonprofit agencies, this definition is the same as in the MSC-revived act.]

Currently, ***eligible employee*** means an individual engaged in service to an employer in the employer's business and from whom an employer is required to withhold for federal income tax purposes. *Eligible employee* does not include any of the following:

- An individual employed by the United States government, another state, or a political subdivision of another state.
- An individual whose primary work location is not in Michigan.
- An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer (e.g., seasonal workers).
- An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year (e.g., part-time workers).
- An individual whose minimum hourly wage rate is the wage for employees under age 18, or the temporary training wage for new employees under age 20, as determined under the Improved Workforce Opportunity Wage Act.[3]
- An individual employed by a temporary help firm (e.g., a temp agency) as described in the Michigan Employment Security Act.[4]
- A variable hour employee as defined in federal regulations.[5]
- An individual who is exempt from overtime requirements under the federal Fair Labor Standards Act (i.e., employed in a bona fide executive, administrative, or professional capacity or in the capacity of a computer or outside sales employee).[6]
- An individual who is *not* employed by a public agency (i.e., the federal government; a state or local government; or federal, state, local, or interstate governmental agencies) and is covered by a collective bargaining agreement in effect.
- An individual employed by an air carrier as a flight deck or cabin crew member subject to title II of the federal Railway Labor Act;[7] an employee of an air carrier as described in section 201 of that act,[8] or an employee of a rail carrier as defined in section 1 of the federal Railroad Unemployment Insurance Act.[9]

[3] https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-408-934B
[4] Section 29(1)(*l*): https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-421-29
[5] 26 CFR 54.4980H-1: https://www.ecfr.gov/current/title-26/part-54/section-54.4980H-1#p-54.4980H-1(a)(49)
[6] 29 USC 213(a)(1): https://www.law.cornell.edu/uscode/text/29/213 See https://www.dol.gov/agencies/whd/fact-sheets/17a-overtime
[7] 45 USC 151 to 188: https://www.law.cornell.edu/uscode/text/45/chapter-8
[8] 45 USC 181: https://www.law.cornell.edu/uscode/text/45/181
[9] 45 USC 351: https://www.law.cornell.edu/uscode/text/45/351

As noted above, the bill would use the term ***employee*** instead of *eligible employee*. The bill would remove most of the specific exemptions described above.[10] Under the bill, ***employee*** would mean an individual engaged in service to an *employer* in the employer's business. However, it would not include any of the following:

- An individual employed by the United States government.
- An individual employed in accordance with the Youth Employment Standards Act, which regulates the hours and conditions of employment of workers under age 18.[11]
- An ***unpaid trainee or unpaid intern***.
- An individual who works in accordance with an employer policy that both allows the individual to schedule their own working hours and prohibits the employer from taking adverse personnel action against the individual if they do not schedule a minimum number of working hours.

  Unpaid trainee or unpaid intern would mean an individual who receives training from an employer in accordance with all of the following:
  - The training is similar to the experience provided in a vocational school.
  - The training is for the benefit of the individual.
  - The individual does not displace the employer's employees, but works under close supervision.
  - The employer receives no immediate advantage from the activities of the individual and, on occasion, the employer's operations may be impeded by the individual.
  - The individual is not entitled to a job at the conclusion of the training.
  - The employer and the individual understand that the individual is not entitled to wages for the time spent in training.

[The MSC-revived act also used the term *employee* instead of *eligible employee*. It defined an *employee* as an individual engaged in service to an employer, except the U.S. government, in the business of the employer. It did not contain any of the other exceptions described above.]

Accrual of earned sick time

The act currently requires employers to provide eligible employees with at least one hour of paid earned sick time for every 35 hours worked. Employers do not have to allow the accrual of more than one hour per calendar week or more than *40 hours* per benefit year.[12] In addition, employers must allow employees to carry over up to *40 hours* of earned sick time from one benefit year to the next. Employers do not have to allow employees to use more than *40 hours* of earned sick time each benefit year. Alternatively, employers can provide at least *40 hours* of earned sick time at the beginning of a benefit year (or a prorated amount for employees hired during the year), and they are then not required to allow carryover between benefit years. Employees can in general use the time as it is accrued—except that employers can require them to wait until the ninetieth calendar day of their employment to begin using accrued time.

[10] However, according to LEO, railway workers and employers covered by the Railroad Unemployment Insurance Act are not subject to the Earned Sick Time Act as a matter of federal preemption.

[11] https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-Act-90-of-1978

[12] The term *benefit year* is currently defined as a consecutive 12-month period used by an employer to calculate an eligible employee's benefits. The bill would instead simply use *year*, which for purposes of these earned sick time accrual, use, and carryover provisions, is defined as a regular and consecutive 12-month period, as determined by an employer.

Under the bill, employees would accrue at least one hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off. Except for small businesses (see below), the required 40-hour amounts of earned sick time italicized above would be increased to 72 hours. The bill would specifically allow employers to permit the use of more than 72 hours of earned sick time in a year, or the carryover of more than 72 hours from one year to the next, if they so choose. [The MSC-revived act also included these provisions.]

For employees hired after February 21, 2025, the bill would allow employers to require a wait of 120 calendar days before the employee can use their accrued earned sick time. However, an employer that makes contributions to a multiemployer plan (as described below) could not require an employee to wait 120 days before using unused accrued earned sick time and nonforfeited paid sick leave benefits earned through past service for a different employer that is part of the same multiemployer plan or any paid sick leave benefits earned by working under the collective bargaining agreement for that employer. [The MSC-revived act allowed a 90-day wait for new employees and did not include provisions related to multiemployer plans.]

Under the bill, as an alternative to the accrual of earned sick time, an employer could provide at least 72 hours of earned sick time at the start of the year for immediate use. An employer that does so would not have to calculate and track employee accrual of earned sick time, allow employees to carry over unused earned sick time from one year to the next, or pay employees the value of any unused earned sick time at the end of the year it was provided in. [The MSC-revived act did not include these provisions.]

The bill also would provide the following:

- An individual who is exempt from overtime requirements under the federal Fair Labor Standards Act (see footnote #6) is assumed to work 40 hours per workweek unless their normal workweek is less than 40 hours. [This was included in the MSC-revived act.]
- An employee who is covered by 29 CFR 825.801 (which states the purposes of the federal Family Medical Leave Act)[13] is assumed to have worked at least 40 hours in each workweek, or to have worked at least 30 hours if they are employed by a small business. [This was not included in the MSC-revived act.]

Small businesses

Under the bill, the provisions described above would apply to ***small businesses***, except that the applicable required amounts of earned sick time (for its provision, use, and carryover) would remain at 40 hours per year. [This was the same in the MSC-revived act, except that it further required small businesses to allow an employee who accrues more than 40 hours of earned sick time in a calendar year to use at least an additional 32 hours of unpaid sick time.]

> ***Small business*** would mean an employer for which up to 10 individuals work for compensation (full-time, part-time, or temporary) during a given week. An employer would not be a small business if it maintained 11 or more employees on its payroll during any 20 or more calendar workweeks in either the current or immediately preceding calendar year. [In the MSC-revived version, the condition for being a small business was having up to nine employees, instead of up to 10.]

[13] https://www.ecfr.gov/current/title-29/section-825.101 See 29 CFR 825.802 for the definition of "eligible employee" under the FMLA: https://www.ecfr.gov/current/title-29/section-825.102

In addition, under the bill, small businesses would not be required to do any of the following until October 1, 2025:

- Allow employees to accrue earned sick time under the act.
- Provide earned sick time to an employee as an alternative to its accrual.
- Calculate and track an employee's accrual of earned sick time.

Finally, under the bill, a small business that employs its first employee after February 21, 2025, would not be subject to the act until three years after the date that first employee is employed.

[The MSC-revived act did not include the two provisions described above.]

Part-time employees

Under the bill, an employer that employs part-time employees could, as an alternative to earned sick time accrual, provide paid earned sick time to those employees at the beginning the year for immediate use in accordance with all of the following requirements:

- The employer must provide the employee at the time of hire with a written notice of how many hours the employee is expected to work in a year.
- The amount of earned sick time provided must, at a minimum, be proportional to the time the employee would have earned if they worked all the expected hours specified in the notice.
- If the employee works more than the expected hours, the employer must provide additional earned sick time in accordance with the act's accrual requirements.

[The MSC-revived act did not include the provisions described above.]

Multiemployer plans

Under the bill, an employer that is a signatory to a collective bargaining agreement that requires contributions to a multiemployer plan (as defined in the federal Employee Retirement Income Security Act[14]) would be in compliance with the act if the amounts, accrual, and use of paid sick leave under the plan equal or exceed what is required by the act. However, a plan would not have to pay accrued paid sick leave benefits if an employer does not remit required contributions to the plan, and an employer that did not make the require contributions would not be in compliance with the act. Contributions for the paid sick leave plan would have to be due on the same schedule as other fringe benefit funds or plans the employer is required to contribute to. [The MSC-revived act did not include these provisions.]

Allowable uses of earned sick time

Currently, an employer must allow an employee to use earned sick time for any of the following purposes:

- For the employee's mental or physical illness, injury, or health condition or its medical diagnosis, care, or treatment, or for preventative medical care for the employee.
- For the employee's ***family member***'s mental or physical illness, injury, or health condition or its medical diagnosis, care, or treatment, or for preventative medical care for a family member of the employee.
- If the employee or their family member is a victim of domestic violence or sexual assault, for the medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services

[14] 29 USC 1002: https://www.law.cornell.edu/uscode/text/29/1002

organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

- For closure of the employee's primary workplace by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by such an order; or if appropriate health authorities or a health care provider[15] has determined that the exposure of the employee or their family member to a communicable disease, whether or not they have actually contracted it, means that their presence in the community would jeopardize the health of others.

The bill would retain the above uses of sick time. It would additionally allow its use for meetings at a school or place of care related to the health or disability of a child or the effects of domestic violence or sexual assault on a child. In addition, the bill would revise the health emergency provisions to apply when the employee's "place of business" is closed by official order, instead of their "primary workplace." [The MSC-revived act included these provisions.]

Under current law and the bill, an employer does not have to allow the use of earned sick time for a purpose other than those listed. The bill would keep this provision. In addition, the bill would allow an employer to take adverse personnel action against an employee who uses earned sick time for any other purpose. [The MSC-revived act did not include this provision.]

Under current law, ***family member*** includes all of the following:

- A biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis.
- A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or an individual who stood in loco parentis when the employee was a minor child.
- An individual the employee is legally married to under the laws of a state of the United States.
- A grandparent or a grandchild.
- A biological, foster, or adopted sibling.

Under the bill, ***family member*** would include all of the following:

- A biological, adopted, or foster child, stepchild or legal ward, a child of a ***domestic partner***, or a child to whom the employee stands in loco parentis.
- A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or an individual who stood in loco parentis when the employee was a minor child.
- A domestic partner or an individual the employee is legally married to under the laws of a state of the United States.
- A grandparent or a grandchild.
- A biological, foster, or adopted sibling.
- Any individual related by blood to the employee. (The bill does not specify a degree of consanguinity.)
- Any individual whose close association with the employee is the equivalent of a family relationship.

[15] The term *health care provider* is defined in current law. The bill would eliminate that definition.

Domestic partner would mean an adult in a ***committed relationship*** with another adult, including both same-sex and different-sex relationships.

Committed relationship would mean a relationship in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between same-sex or different-sex individuals that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including a civil union.

[The MSC-revived act included most of the bill's provisions described above—except that its criteria for being a *family member* were less broad. Specifically, it required individuals related by blood to the employee to also have a close association with them, equivalent to a family relationship, in order to be considered a family member. In addition, it provided that any other individual whose close association with the employee is the equivalent of a family relationship must also be related to the employee by affinity (through marriage ties) before being considered a family member.]

Notice requirements

The act currently requires employees to comply with the employer's usual and customary notice, procedural, and documentation requirements for using leave when requesting to use earned sick time, and it allows employers to discipline or fire employees who fail to do so. Employers must give employees at least three days to provide the employer with any required documentation.

The bill would remove the above provisions. Instead, under the bill, if an employee's need to use earned sick time is foreseeable, the employer could require up to seven days' advance notice of the employee's intention to use that time.

If an employee's need for earned sick time use is not foreseeable, the employer could require that the employee provide notice in either of the following ways:

- As soon as practicable.
- In accordance with the employer's policy related to requesting or using earned sick time if both of the following are met:
    - On the latest of the date of the employee's hire, the bill's effective date, or the policy's effective date, the employer provides the employee with a written copy of the policy that includes procedures for how employees must provide notice.
    - The employer's notice requirements allow employees to provide notice after the employee is aware of the need for earned sick time use.

Employers that require notice for sick time use that is not foreseeable could not deny the use of unforeseeable earned sick time use if either of the following applies:

- The employer did not provide a written policy as described above.
- The employer made a change to the written policy and did not notify employees within five days of the change.

The bill would allow an employer to take adverse personnel action against an employee who violates the notice requirements described above.

[The MSC-revived act allowed employers to require notice from an employee as soon as practicable for sick time use that is not foreseeable. It did not include the alternative provision and requirements related to an employer's policy on the matter. The MSC-revived act also did not include the provision allowing an employer to take adverse personnel action against an employee who violates the notice requirements.]

Documentation requirements

As noted above, the bill would remove provisions of the act that currently require employees to comply with the employer's usual and customary notice, procedural, and documentation requirements for using leave when requesting to use earned sick time; allow employers to discipline or fire employees who fail to do so; and require employers to give employees at least three days to provide the required documentation.

Current law prohibits an employer from requiring disclosure of the details of an employee's or family member's medical condition and requires that an employer treat as confidential any health information it possesses. An employer can require an employee who is using sick time because of domestic violence or sexual assault to provide documentation that the sick time was used for that purpose. Acceptable documentation this case includes police reports, signed statements from victim and witness advocates, and court documents. An employer cannot require that the documentation explain the details of the violence, and must keep confidential any information it has about the domestic violence or sexual assault.

Under the bill, an employer could require reasonable documentation that earned sick time is being used for an allowable purpose only in cases involving the use of earned sick time for three or more consecutive days. Employees would have to provide this documentation within 15 days after an employer requests it, but employers could not delay the commencement of earned sick time because they have not yet received documentation.

Documentation signed by a health care professional that indicates that earned sick time is necessary would be considered reasonable documentation. As under current law, an employer could not require documentation that explains the nature of an illness and would have to treat as confidential any health information it has. For domestic violence or sexual assault, reasonable documentation would include the currently acceptable documentation described above, and the bill would keep current provisions that prohibit an employer from requiring details of the violence and require an employer to keep confidential any information it has about the domestic violence or sexual assault.

An employer would be responsible for the out-of-pocket costs an employee incurs in obtaining the documentation required by the employer. If the employee does have health insurance, the employer would be responsible for paying any costs charged to the employee by the health care provider for providing the documentation required.

[The MSC-revived act included all of the bill's provisions described above, except that it required an employee to provide reasonable documentation requested by an employer "in a timely manner," rather than within 15 days.]

Employee protections

The bill would prohibit an employer or any other person[16] from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any right protected under the act. In addition, an employer could not take ***retaliatory personnel action*** or discriminate against an employee because the employee exercised a right protected under the act. The bill states that the rights protected by the act include at least all of the following:

- The right to use earned sick time under the act.
- The right to file a complaint or inform any person about an employer's alleged violation of the act.
- The right to cooperate with the Department of Labor and Economic Opportunity (LEO) in its investigations of alleged violations of the act.
- The right to inform any person of their rights under the act.

Retaliatory personnel action would mean any of the following:

- Denial of any right guaranteed under the act.
- A threat, discharge, suspension, demotion, reduction of hours, or other adverse personnel action against an employee or former employee for exercise of a right guaranteed under the act.
- Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under the act.
- Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under the act.

An employer's absence control policy could not treat earned sick time taken under the act as an absence that could lead to or result in retaliatory personnel action.

The protections described above would apply to a person that mistakenly but in good faith alleges a violation described above.

Finally, as noted above under "Allowable uses of earned sick time" and "Notice requirements," the bill would allow an employer to take adverse personnel action against an employee who uses earned sick time for a purpose other than one specified as allowable or who violates the notice requirements described above.

[The MSC-revived act did not contain the final provision described above, related to adverse personnel actions. In addition, it provided that there was a rebuttable presumption of a violation of the act if an employer took adverse personnel action against a person within 90 days after that person filed a complaint with LEO or a court alleging a violation of the act; informed any person about an employer's alleged violation of the act; cooperated with LEO or another person in the investigation or prosecution of an alleged violation of the act; opposed any policy, practice, or act prohibited under the act; or informed any person of their rights under the act.]

Wage rate calculation

The wage that must be paid to employees for earned sick time is calculated as the greater of either the normal hourly wage or base wage for that employee or the standard state minimum wage. Under both current law and the bill, this calculation does not have to include overtime

[16] The bill does not provide any penalties, sanctions, or remedies that would apply to a violator that is not an employer.

pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities (i.e., tips).[17] [The MSC-revived act did not contain this provision. It provided that the normal hourly wage of an employee whose hourly wage varies depending on the work performed is the average hourly wage of the employee in the pay period immediately before the one they used the sick time in.]

Separation from employer

Currently, if an employee leaves an employer and is then rehired, the employer does not have to allow the employee to retain any of their previously accumulated earned sick time.

Under the bill, if an employee leaves and is rehired within two months, the employer would have to reinstate previously accrued, unused earned sick time and allow the employee to use that earned sick time and accrue additional earned sick time upon their reinstatement. Further, if a different employer succeeds or takes the place of a previous employer, the new employer would have to assume responsibility for the earned sick time rights of the employees, and the employees would be entitled to use their previously accrued earned sick time.

However, neither of the above provisions would apply if the employer paid out the value of the accrued sick time at the time of separation or succession.

[The MSC-revived act required the reinstatement of previously accrued sick time when an employee was rehired within six months of leaving. It did not include the exceptions for cases when the employer had already paid out the value of the accrued sick time.]

Departmental investigations

The act currently requires the Department of Labor and Economic Development (LEO) to investigate, in a timely manner, complaints brought by employees alleging violations of the act.[18] Affected employees can file a claim with LEO up to six months after an alleged violation. LEO must attempt to resolve a complaint through mediation between the complainant and the subject of the complaint, or other means, and must keep complainants notified regarding the complaint and investigation status.

Under the bill, any person alleging a violation (i.e., not just the employee affected) would have the right to file a complaint with LEO, and an affected employee would have up to three years to do so. (The time limit appears not to apply to other complainants.) LEO would have to keep the name and identifying information of the employee or person reporting a violation as confidential as possible under applicable laws, but could disclose it if authorized by the person or employee. LEO still would have to attempt to resolve a complaint through mediation or other means and keep complainants notified regarding the complaint and investigation status. [The MSC-revived act included all of the bill's provisions described above, except that it would have allowed an affected employee to file a claim with LEO within the later of three years after the violation or three years after the date the employee knew of the violation.]

[17] This wage is based on the standard minimum wage, including for employees paid the so-called "tipped wage" (now 38% of that standard minimum). Employees paid a tipped wage by their employer still must make at least the minimum wage—employers can credit employee tips toward meeting that threshold, but must make up any shortfall.

[18] Although the act specifies the Department of Licensing and Regulatory Affairs as the responsible department, these responsibilities were transferred to LEO upon the department's creation by Executive Reorganization Order 2019-3: https://www.legislature.mi.gov/Laws/MCL?objectName=MCL-125-1998

Violations of the act

Under current law, if LEO determines that a violation has occurred, it must issue a notice to the offender describing the violation, the relief required, and the method of appealing this determination. LEO can impose penalties (not specified in the act) and grant an employee or former employee payment of all earned sick time improperly withheld. In addition, an employer that fails to provide earned sick time in violation of the act is subject to an administrative fine of up to $1,000.

The bill would keep the notice provisions described above. However, instead of being limited to granting payment of all improperly withheld earned sick time, LEO could grant an employee or former employee "all appropriate relief," which could include all direct damages incurred by the complainant as a result of the violation, back pay, or (in a case of job loss) reinstatement.

If the LEO director determines that there is reasonable cause to believe an employer violated the act and LEO is unable to obtain voluntary compliance in a reasonable time, LEO would have to bring a civil action on behalf the employee. In addition, LEO could investigate and bring a civil action on behalf of all similarly situated employees at the same work site. The bill would provide both the following:

- In addition to the civil remedies described above, an employer that takes retaliatory personnel action against an employee or former employee is subject to a civil fine of up to $1,000 for each violation.
- In addition to the civil remedies described above, an employer that fails to provide earned sick time to an employee in violation of the act is subject to a civil fine of up to eight times the employee's normal hourly wage.

[The MSC-revived act contained several of the bill's provisions described above, except that an employer who failed to provide earned sick time in violation of the act was subject to a civil fine of up to $1,000 (rather that eight times the employee's hourly wage). In addition, the MSC-revived act further allowed an employee affected by an alleged violation to bring a civil action against the employer for appropriate relief, including payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits the employee otherwise would have been eligible for had they not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows. Filing a claim with LEO regarding the violation was neither a prerequisite nor a bar to bringing such a civil action. The civil action could be brought within the later of three years after the violation or three years after the date the employee knew of the violation. In addition, LEO's authority to bring a civil action on behalf of similarly situated employees was limited to only those who had not themselves brought an action.]

Collective bargaining agreements and employees covered by contracts

The bill would provide that any contract or agreement between an employer and an employee, or any acceptance by an employee of a paid or unpaid leave policy, that provides fewer rights or benefits than provided by the act is void and unenforceable. [The MSC-revived act included this provision.]

In addition, under the bill, if an employer's employee is covered by a contract, not including an employer policy signed by an employee, and all of the following apply, then the act would

apply on the stated expiration date of the contract, notwithstanding any statement that the contract continues in force until a future date or event or the execution of a new contract:

- The employer and employee signed the contract before January 1, 2025.
- The contract is effective for not more than three years.
- The contract conflicts with the act.
- The employer notifies LEO of the contract.

[The MSC-revived act did not include the above provisions.]

Notice to employees

The act currently requires LEO to create, and make available to employers at no cost, a poster that contains all of the following information, which employers must display in a conspicuous place accessible to employees:

- The amount of earned sick time required to be provided to an employee under the act.
- The terms under which earned sick time may be used.
- The employee's right to file a complaint with LEO for any violation of the act.

The bill would require employers to provide written notice to all employees, by the later of 30 days after the bill's effective date or the employee's date of hire, that includes at least all of the following:

- The amount of earned sick time required to be provided to an employee under the act.
- The employer's choice of how to calculate a benefit year.
- The terms under which earned sick time may be used.
- That the employer cannot take retaliatory personnel action against an employee for using earned sick time the employee is eligible for.
- The employee's right to file a complaint with LEO for any violation of the act.

The notice would have to be in English, Spanish, and any other language that is the first language spoken by at least 10% of the employer's workforce (if LEO has translated the notice into that language).

In addition, employers would have to display a poster with the above information, in the same languages as described above, in a conspicuous place that is accessible to employees.

LEO would have to create notices and posters that contain the above information, in English, Spanish, and any other language the department considers appropriate, and make them available to employers. (The bill would not require LEO to make these materials available to employers at no cost.)

Currently, an employer that willfully violates the posting requirement described above is subject to an administrative fine of up to $100 for each separate violation.

The bill would instead provide that an employer that willfully violates a notice or posting requirement described above is subject to a civil fine of up to $100 for each violation.

[The MSC-revived act included all of the bill's provisions described above, except that it additionally required the notice and poster to include notice of the employee's right to bring a

civil action for any violation of the act. In addition, it applied the civil fine to "each separate violation," rather than "each violation."]

Other provisions of the bill

Current law provides that earned sick time must be used in one-hour increments unless the employer has provided a written policy to employees with a different increment policy. Under the bill, employees could use earned sick time in the smaller of one-hour increments or the smallest increment the employer uses to account for absences or the use of other time. [The MSC-revived act included this provision.]

The bill would prohibit employers from requiring employees to search for or secure a replacement worker as a condition of using earned sick time. [The MSC-revived act included this provision.]

An employee who is transferred to a separate division, entity, or location with the same employer retains all their previously accrued sick time. [This provision is included in current law, the bill, and the MSC-revived act.]

An employer that provides comparable amounts of paid leave (e.g., vacation or personal days) to employees each year is in compliance with the act as long as that leave can be used in the same amounts and for the same purposes as earned sick time under the act. [This provision is included in current law, the bill, and the MSC-revived act.]

For benefit years occurring when the bill takes effect, the required leave amounts provided before that effective date would count toward the required amounts.

MCL 408.962 et seq.

SUMMARY OF PROVISIONS NOT IN THE BILL:

As described above, the Earned Sick Time Act as originally enacted by the legislature in 2018 was revived by order of the Michigan Supreme Court effective February 21, 2025. House Bill 4002, which was enrolled later the same day, does not include sections 1, 9, 10, 11, 13, and 14 of the MSC-revived act. To provide additional context on the recent changes to the law, the provisions of the MSC-revived act that are not included in the bill are described below.

Short title

The MSC-revived act changes the title of the act from the Paid Medical Leave Act to the Earned Sick Time Act.

Multilingual outreach program

Section 9 of the act was repealed at the end of 2018, but revived as law effective February 21, 2025. It requires LEO to develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under the act. The program must include distribution of notices and other written material in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers. (As noted above, the term *health care provider* is no longer defined for purposes of the act under the bill.)

Employer record-keeping requirements and presumption of violation

The MSC-revived act adds language to provide the following, effective February 21, 2025:

- An employer must retain records documenting the hours worked and earned sick time taken by employees for at least three years.
- An employer must allow LEO access to those records, with appropriate notice and at a mutually agreeable time, so that LEO can monitor compliance with the requirements of the act.

In addition, if a question arises as to whether an employer has violated an employee's right to earned sick time under the act, and if either of the following apply, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence:

- The employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee.
- The employer does not allow LEO reasonable access to those records.

(The previously effective version of the act required an employer to retain records of the hours worked and earned sick time taken by eligible employees for at least one year, and provided that those records must be open to inspection by the director of LEO at any reasonable time.)

Scope and application

The MSC-revived act includes a statement (also included in the previously effective version of the act) that the act does not do any of the following:

- Prohibit an employer from providing more earned sick time than the act requires.
- Diminish any rights provided to an employee under a collective bargaining agreement.
- Except as otherwise described above, preempt or override the terms of any collective bargaining agreement in effect before February 21, 2025.
- Prohibit an employer from establishing a policy that allows an employee to donate unused accrued earned sick time to another employee.

The MSC-revived act also adds a statement that the act establishes only minimum requirements related to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to eligible employees.

Rules

Section 13 of the act was repealed at the end of 2018, but revived as law effective February 21, 2025. It authorizes the director of LEO to develop and issue rules as necessary to administer the Earned Sick Time Act.

Severability and conditional ineffectiveness

The MSC-revived act provides (as did the previously effective version of the act) that the act is severable—that is, if a court finds any part of it invalid, the other parts remain in effect.[19]

The MSC-revived act also removes language stating that the act does not apply on the effective date of any federally enacted paid medical leave mandate.

[19] All Michigan laws are always already severable. https://www.legislature.mi.gov/Laws/MCL?objectName=mcl-8-5

BACKGROUND:

Section 9 of Article II of the state constitution provides an initiative process for proposing laws by petition. An initiative petition must be signed by a number of voters equal to 8% of the total votes cast for all candidates for governor in the most recent gubernatorial election. Once certified, the petition is presented to the legislature, which has 40 days to enact or reject it without amending it. If the legislature enacts it, the law proposed by the petition becomes a public act without going to the governor for approval. (The governor cannot veto such an enactment.) If the legislature rejects it, the initiative petition is put before the voters at the next general election. If the voters approve it, the resulting law can be amended or repealed only by a three-fourths vote of members elected to and serving in each house of the legislature.

In addition, instead of enacting or rejecting a petition, the legislature can propose a different measure on the same subject. In that case, both the initiative petition and the legislature's alternative measure go on the ballot at the next general election, and the one that receives the most votes becomes law.

In July 2018, the legislature passed the Earned Sick Time Act (2018 PA 338), an initiative petition that was certified by the Michigan Board of Canvassers to appear on the Michigan ballot in the November 2018 general election.[20] The initiative was accordingly not put before the voters. After the election, 2018 PA 369 was enacted to amend the provisions of that act as they had been proposed by the initiative petition and passed by the legislature.[21]

In July 2024, the Michigan Supreme Court ruled in *Mothering Justice v Attorney General* that for the legislature to adopt and amend proposed ballot measures during the same legislative session (rather than, for example, presenting voters with an alternative measure) is unconstitutional in that it places an undue burden on the constitutional right of the people to initiate legislation.[22] The court voided 2018 PA 369 and restored the Earned Sick Time Act (and the Improved Workforce Opportunity Wage Act, a similarly adopted and amended initiative) as it was proposed by petition and originally enacted by the legislature, effective February 21, 2025.[23]

BRIEF DISCUSSION:

Supporters of the bill argue that the one-size-fits-all approach prescribed by the law as revived by the MSC would hurt all businesses, even those that already offer sick time. In particular, they argue that the revived law's lack of clarity about what is "practicable notice" of leave could create a loophole that could be exploited by employees. In addition, some argue that this model does not work for some employers, such as emergency responders and hospitals, that would need to force other employees to work overtime and extra shifts in order to ensure coverage for last-minute leave.

[20] https://legislature.mi.gov/documents/2017-2018/initiative/pdf/SickTimeInitiativeHouseAnalysis.pdf
[21] https://www.legislature.mi.gov/Bills/Bill?ObjectName=2018-SB-1175
[22] https://statecourtreport.org/case-tracker/mothering-justice-v-attorney-general
[23] https://www.faegredrinker.com/en/insights/publications/2024/8/michigan-supreme-court-reinstates-voter-initiated-sick-leave-law

In addition, supporters argue that the bill would address the provisions in the revived law that require employers to track employee accrual hours even if they provide leave in bulk at the beginning of the year, which they contend would represent a significant and unnecessary administrative burden.

Supporters also argued that the bill, by adding provisions specific to small businesses and exempting startup businesses for the first three years, would mitigate the potential harm to small businesses that rely on flexibility and may not be able to handle the administrative and other costs associated with complying with all of the act's requirements. Some raised concerns that if the bill were not enacted, the increased costs could lead to many small business closures and other job losses as businesses try to adapt to the new regulations.

The bill's opponents argue that it would make sick time less accessible to some Michigan workers based on their employer. Data from the Michigan Department of Technology, Management, and Budget suggested that more than 10% of Michigan employees work at firms with fewer than 10 employees, and would thus have less guaranteed sick time than other workers.[24] They also argued that the legislature should allow the law as proposed by petition and originally passed to take effect and not act to limit or deny the benefits and protections that it would put into law.

FISCAL IMPACT:

House Bill 4002 would have an indeterminate fiscal impact on the Department of Labor and Economic Opportunity and other units of state and local government. The bill would likely create additional administrative responsibilities for LEO. However, many of these responsibilities would still have been incurred under changes resulting from the Michigan Supreme Court's decision in *Mothering Justice v Attorney General*. The department anticipates requiring additional staff to handle administrative responsibilities pertaining to this bill and other legislation, and the Governor's FY 2025-26 budget recommendation included an additional $1.5 million of general fund and authorization for an additional 10.0 FTE positions for this purpose.

Any potential costs incurred by government units, as employers, for providing earned sick time in compliance with the bill's provisions would likely be similar in scope to costs that would otherwise be incurred beginning in February 2025, considering the Michigan Supreme Court's decision in *Mothering Justice v Attorney General*. There may be marginal cost differences between the provisions of the bill and provisions of the MSC-revived act, but these differences cannot currently be estimated, as they would largely be driven by employee behaviors that cannot be forecast.

In addition, as described above, the bill would establish new civil fines. Revenue collected from civil fines is used to support public and county law libraries. Also, under section 8827(4) of the Revised Judicature Act, $10 of the civil fine would be deposited into the state's Justice System Fund, which supports various justice-related endeavors in the judicial and legislative branches of government and the Departments of State Police, Corrections, Health and Human Services, and Treasury. Because there is no practical way to determine the number of violations

[24] https://www.bridgemi.com/michigan-government/million-michigan-workers-may-lose-sick-leave-guarantee-under-house-plan

that would occur, an estimate cannot be made of the amount of additional revenue the state would collect or the amount of revenue that would be directed to libraries.

In addition to the possibility of an increase in court cases because of employers violating provisions of the bill, the bill would allow LEO to bring civil actions under certain circumstances. Local courts would incur costs if provisions of the bill result in an increase in caseloads and a corresponding increase in administrative costs. It is difficult to project the actual fiscal impact to courts due to variables such as law enforcement practices, prosecutorial practices, judicial discretion, case types, and complexity of cases.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.