

EARNED SICK TIME ACT (EXCERPT)
Act 338 of 2018

408.963 Earned sick time to be provided by employer; alternatives; accrual; use; carry over; "year" defined; workweek; compliance; pay rate; replacement worker not required.

Sec. 3.

(1) An employer shall provide earned sick time to each of the employer's employees in this state.

(2) Except as otherwise provided in section 12, this subsection, and subsection (4), an employee of a small business must accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. As an alternative to the accrual of paid earned sick time, a small business may provide an employee not less than 40 hours of paid earned sick time at the beginning of a year for immediate use. Notwithstanding the requirements of subsection (6), this act does not require a small business to do any of the following until October 1, 2025:

(a) Allow an employee to accrue paid earned sick time in accordance with this subsection.

(b) Provide paid earned sick time to an employee as an alternative to the accrual of paid earned sick time.

(c) Calculate and track an employee's accrual of paid earned sick time.

(3) Except as otherwise provided in this subsection and subsection (4), all other employees must accrue a minimum of 1 hour of paid earned sick time for every 30 hours worked, not including hours used as paid time off, but may not use more than 72 hours of paid earned sick time in a year, unless the employer selects a higher limit. As an alternative to the accrual of paid earned sick time, an employer may provide an employee not less than 72 hours of paid earned sick time at the beginning of a year for immediate use.

(4) As an alternative to the accrual of paid earned sick time, an employer that employs a part-time employee may provide paid earned sick time to the part-time employee at the beginning of a year for immediate use in accordance with all of the following requirements:

(a) The employer provides the part-time employee with a written notice of how many hours the part-time employee is expected to work for a year at the time of hire.

(b) The amount of earned sick time provided to the part-time employee at the beginning of the year is, at a minimum, proportional to the earned sick time that the part-time employee would accrue if the part-time employee worked all of the hours expected as provided in the written notice.

(c) If the part-time employee works more hours than what is expected as provided in the written notice, the employer must provide the part-time employee with additional earned sick time in accordance with the accrual requirements under this section.

(5) Subject to the requirements of this subsection, earned sick time carries over from year to year, but a small business is not required to allow an employee to use more than 40 hours of paid earned sick time in a single year, and all other employers are not required to allow an employee to use more than 72 hours of paid earned sick time in a single year. An employer shall allow an employee to carry over all of the employee's unused accrued paid earned sick time not to exceed 72 hours or, if the employer is a small business, not to exceed 40 hours from 1 year to the next year, unless the employer selects a higher limit. This act does not require an employer that provides paid earned sick time at the beginning of a year as described in subsections (2) to (4) to do any of the following:

(a) Allow an employee to carry over any unused earned sick time from 1 year to the next year.

(b) Calculate and track an employee's accrual of paid earned sick time.

(c) Pay the employee the value of the employee's unused accrued paid earned sick time at the end of the year in which the earned sick time was accrued.

(6) Earned sick time as provided in this section begins to accrue on the effective date of this act, or upon commencement of the employee's employment, whichever is later. An employee may use accrued earned sick time as it is accrued, except that an employer may require an employee hired after the effective date of the 2025 amendatory act that amended this section to wait until 120 calendar days after commencing employment before using accrued earned sick time.

(7) An employer is in compliance with this section if the employer meets either of the following conditions:

(a) Provides the employer's employees with paid time off in not less than the same amounts of time off as provided under this act that may be used for the purposes described in section 4 or any other purpose. If an employee uses paid time off as described in this subdivision for the purposes described in section 4, this act applies to the use of that paid time off. This act does not require an employer that provides paid time off as described in this subdivision to allow an employee to use paid time off for the purposes described in section 4 in an amount that exceeds the amounts of time off provided under this act.

(b) The employer is a signatory to a collective bargaining agreement that requires contributions to a multiemployer plan as that term is defined in section 3 of subtitle A of title I of the employee retirement income

security act of 1974, 29 USC 1002, that may be used under the same conditions as provided for under this act, in an amount equal to or greater than what is required to be provided under this act, and that accrues at a rate equal to or greater than the rate described in subsections (2) and (3). This act does not require a multiemployer plan that provides benefits in accordance with this act to pay accrued paid sick leave benefits if an employer does not remit required contributions to the plan. If an employer does not make required contributions to the multiemployer plan as provided in this subdivision, the employer is not considered to be in compliance with the employer's obligations under this act.

(8) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage or base wage for that employee or the minimum wage established under the improved workforce opportunity wage act, 2018 PA 337, MCL 408.931 to 408.945, but not less than the minimum wage rate established in section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. This act does not require an employer to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, tips, or gratuities in the calculation of an employee's normal hourly wage or base wage.

(9) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

(10) For purposes of subsections (2) to (5), "year" means a regular and consecutive 12-month period, as determined by an employer.

(11) For purposes of earned sick time accrual under this act, all of the following apply:

(a) An employee who is exempt from overtime requirements under section 13(a)(1) of the fair labor standards act, 29 USC 213, is assumed to work 40 hours in each workweek unless the employee's normal workweek is less than 40 hours, in which case earned sick time accrues based on that normal workweek.

(b) An employee who is covered under 29 CFR 825.801 is assumed to have worked not less than 40 hours in each workweek or is assumed to have worked not less than 30 hours if employed by a small business.

History: 2018, Act 338, Eff. Mar. 29, 2019 ;-- Am. 2018, Act 369, Eff. Mar. 29, 2019 ;-- 2018, Act 338, Eff. Feb. 21, 2025 ;-- Am. 2025, Act 2, Imd. Eff. Feb. 21, 2025

Compiler's Notes: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018. For the transfer of powers and duties of the department of licensing and regulatory affairs to the department of labor and economic opportunity, see E.R.O. No. 2019-3, compiled at MCL 125.1998. See *Mothering Justice v Attorney General*, case no. 165325, July 31, 2024. The Michigan Supreme Court held that 2018 PA 369 was unconstitutional and, therefore void and revived the original initiative as enacted by the Legislature on September 5, 2018, effective February 21, 2025.