

EARNED SICK TIME ACT/ PAID MEDICAL LEAVE ACT

Phone: (517) 373-8080
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Senate Bill 1175 (S-1) as passed by the Senate
Sponsor: Sen. Mike Shirkey
House Committee: Michigan Competitiveness
Senate Committee: Government Operations
Complete to 12-3-18

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

As described in further detail in **Background**, below, the legislature adopted the initiative petition creating an Earned Sick Time Act on September 5, 2018, enacting it as Public Act 338 of 2018. While this summary accordingly describes the Act's provisions as "current" or as applying "currently," the Act does not take effect until March of 2019. Senate Bill 1175 would amend the Act's provisions prior to its effective date.

The bill would amend the Earned Sick Time Act to do all of the following:

- Rename the Act the Paid Medical Leave Act.
- Lower the number of hours that could generally be accrued from 72 to 36, and provide that an eligible employee could accrue one hour for every 40 hours worked, instead of one for every 30.
- Eliminate relatives of a domestic partner from the list of qualifying family members for whom the employee could use paid medical leave time, as well as individuals with whom the employee has the equivalent of a family relationship.
- Remove references to a *domestic partner* throughout the Act, which is currently defined as an adult in a committed relationship, including same-sex relationships.
- Replace the term *employee* with *eligible employee*, and limit the individuals to whom the Act would apply.
- Remove references to *retaliatory personnel action*, as the section prohibiting retaliatory personnel actions by employers against employees exercising a right under the Act would be repealed.
- Replace the term *earned sick time* with *paid medical leave*, remove the provision that the time could be unpaid as well as paid, and limit the individuals who could make use of it to "eligible" employees.

Earned sick time and its accrual

Generally under the Act, employees accrue an hour of earned sick time (EST) for every 30 hours worked, up to a maximum of 72 hours per year, and EST can carry over from year to year (but employers may limit the hours used in a calendar year). The bill would lower the maximum hours that may be accrued to 36, raise the hours to be worked for each hour of paid medical leave to 40, and limit the number of hours that could be carried over to 36. (Alternatively, the bill would allow an employer to provide at least 36 hours to an eligible employee at the beginning of the year or when the employee becomes eligible and then prohibit the employee from carrying over any hours.)

However, an employee at a small business currently accrues an hour of EST for every 30 hours worked up to a maximum of 40 hours of paid EST in a calendar year (and up to 32 hours of unpaid sick time). The bill would remove the separate category for small businesses.

The bill would also allow an employer to exclude overtime, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities from the calculation of an eligible employee's normal hourly wage or base wage.

Currently, an employer cannot require an employee to find a replacement worker as a condition for using sick time. The bill would remove that provision.

Eligible employee

The bill would replace the previous term, *employee*—defined as an individual engaged in service to an employer in the business of the employer, except that the employee does not include those employed by the U.S. government—with the term *eligible employee*. An eligible employee would mean an employee who has been employed (1) for at least 12 months by the employer with respect to whom leave is requested under Section 2612 of the U.S. Code and (2) for at least 1,250 hours of service with that employer during the previous 12-month period. An eligible employee would not include any of the following:

- An individual who is exempt from overtime under 29 USC 213(a)(1), which generally applies to employees in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman.
- An individual covered by a current collective bargaining agreement who is not employed by the federal or state government, a political subdivision of the state, or any interstate governmental agency.
- An individual employed by the U.S. government, another state, or a political subdivision of another state.
- An individual employed by an air carrier as a flight deck or cabin crew member.
- An employee of an air carrier that is engaged in interstate or foreign commerce or that transports mail.
- Certain employees under the Railroad Unemployment Insurance Act.
- An individual whose primary work location is not in Michigan.
- A new employee under 20 years old working as a trainee, or an employee under 18 years old.

Using earned sick time

The bill would retain most of the categories for which an employee can use EST or paid medical leave, but would limit them to eligible employees and amend the definitions for terms used in the descriptions. For instance, domestic partners and individuals with whom the employee had the equivalent of a family relationship would be removed from the definition of a *family member* (for whose needs an employee could take EST/paid medical leave). The bill would remove meetings at a child's school or care facility or dealing with the effects of domestic violence or sexual assault on the child from the list of qualifying uses for EST/paid medical leave.

Under the Act, an employer may require an employee to provide up to 7 days' advance notice of the need to use sick time if that need is foreseeable. In cases where the need to use sick time is not foreseeable, an employer can require that notice be given as soon as is practicable. Under the bill, in all cases an eligible employee would have to comply with the normal notice,

procedural, and documentation requirements for requesting leave, and an employer could discipline or discharge an eligible employee for failure to do so.

Currently, an employee retains his or her time when transferred to a separate division, entity, or division. Additionally, if the employee separates from employment and is rehired by the same employer within six months, the time is reinstated. The bill would retain the first provision but would not require the employer to reinstate the time upon rehiring. It also would not require that time be carried over if one employer succeeded another and the employee was retained.

Employer records

Currently, an employer must retain records documenting the hours worked and EST taken by its employees for at least three years. The bill would lower that requirement to one year. It would also remove a provision that, in the case of an alleged violation, if the employer has not retained these records adequately or does not allow LARA reasonable access to them, there is a rebuttable presumption that the employer has violated the Act.

Violations and remedies

Under the Act, an employee affected by an employer's violation of the Act could file a claim with LARA, which is required to investigate it, or bring a civil suit against the employer within three years after the date of the violation or learning of the violation. Under the bill, the employee could file a claim with LARA.

The bill would remove language stating that any person alleging a violation under Chapter 408 (Labor) of the Michigan Compiled Laws has the right to file a complaint with LARA and that LARA will ensure confidentiality as much as possible. Additionally, it would allow LARA to grant an eligible employee all paid medical leave improperly withheld, but would remove language stating that LARA could grant the eligible employee damages incurred as a result of the violation, back pay, and reinstatement in case of job loss. It would also remove language requiring LARA to bring a civil action against an employer on behalf of the employee (and all similarly situated employees) when it believes the employer was in violation of the Act and was unable to obtain voluntary compliance.

Notices and informational outreach

The bill would amend the notice requirements under the Act, so that an employer would still have to display a poster with information about the Act in a conspicuous place in the business, but would not have to give employees written notice by April 1, 2019. As in the current Act, the notice would have to indicate the amount of time that must be provided to employees/eligible employees as well as the purposes for which it could be used. The bill would remove inclusion of notice of the employee's right to bring a civil suit against the employer, as well as notice of the prohibition on retaliatory personnel action by an employer because an employee has used or requested using EST. The bill would also remove a requirement that the notice be given in Spanish as well as other languages, if appropriate.

Collective bargaining

Currently, the Act stipulates that it does not diminish any rights provided to an employee under a collective bargaining agreement and does not preempt or override the terms of a collective bargaining agreement in effect prior to the effective date of the Act. The bill would remove this provision.

Repealers

Finally, the bill would repeal Sections 6, 9, and 13 of the Act. Section 6 prohibits retaliatory personnel action or discrimination by an employer against an employee for exercising a right protected under the Act. Section 9 requires LARA to develop a multilingual outreach program to inform people about the availability of EST under the Act. Section 13 allows the director of LARA to promulgate the rules needed to administer the Act.

MCL 408.961 et seq.

BACKGROUND INFORMATION:

Initially, the ballot question committee MI Time to Care proposed the idea of requiring employers to provide paid sick time to their employees in Michigan. On July 27, 2018, the Michigan Board of Canvassers certified that the initiative petition filed by the ballot question committee had an adequate number of signatures for it to move forward. The legislature received the initiative, which is named the Earned Sick Time Act, on July 30.

The Michigan Constitution of 1963 requires that the legislature either enact or reject the initiative within 40 days of receipt, meaning that the legislature had until September 7 to act. If the legislature had rejected the proposal, it would have gone before the voters on the November 2018 ballot (or the legislature could have enacted an alternate measure, which would likewise have gone before the voters). However, the legislature chose to enact the Earned Sick Time Act as written. An initiative is not subject to veto by the governor.

See the House Fiscal Agency analysis for a detailed description of the Earned Sick Time Act: <http://legislature.mi.gov/documents/2017-2018/initiative/pdf/SickTimeInitiativeHouseAnalysis.pdf>

If the legislature does not act, the Earned Sick Time Act as written by the MI Time to Care ballot question committee and enacted as Public Act 338 of 2018 will take effect 91 days after the “sine die” adjournment of the 2018 legislative year (sine die is the final adjournment of a session year, and takes place at noon on a day set by concurrent resolution). This puts the effective date in March of 2019.

FISCAL IMPACT:

House Bill 1175 would have a modest fiscal impact on the Department of Licensing and Regulatory Affairs (LARA). LARA estimates that the bill would result in a \$250,000 reduction in costs, as the department would not require an additional FTE and materials that were anticipated under Public Act 338 of 2018.

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Marcus Coffin

■ 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.