



Maddin Hauser
Attorneys and Counselors

**EARNED SICK TIME ACT / PAID
MEDICAL LEAVE ACT IN MICHIGAN:
*WHAT EMPLOYERS NEED TO KNOW
ABOUT HOW AND WHEN TO COMPLY WITH
SHIFTING STATUTORY REQUIREMENTS***

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Invest in Relationships

- Get to know the people and entities for whom Maddin Hauser works. Understand what makes them tick and what is important to them specifically. Care about what they are trying to express and accomplish. Strong relationships enable use to work through difficult issues and challenging times more efficiently and successfully.

OVERVIEW

- PAST: How did we get here?
- PRESENT: What is currently required to comply with Michigan's paid sick leave law?
- FUTURE: How might Michigan's paid sick leave laws change in the future?





LOOKING BACK ...

BRIEF HISTORY OF THE PAID MEDICAL LEAVE ACT

- Initially introduced via ballot proposal as the Earned Sick Time Act (“ESTA”) in early 2018.
- The Republican legislature adopted the ballot proposal as written in September to avoid the issue appearing on the November ballot.
- The ESTA was amended to become the Paid Medical Leave Act before the end of the 2018 legislative session.



... this process is called – “*adopt and amend*”

RECENT DEVELOPMENTS

- PMLA became effective on March 29, 2019
- In 2022, the Michigan Court of Claims held that the “**adopt and amend**” method used to pass PMLA was unconstitutional and that ESTA provisions would go into effect on February 20, 2023
- The Court of Appeals has reversed that decision, and for now the PMLA remains in effect
- However, the case will be likely appealed to the Michigan Supreme Court





WHERE WE STAND NOW

HOW TO COMPLY WITH THE PMLA

1. Determine whether you are a covered employer under PMLA
2. Identify your employees eligible for PMLA
3. Review your current paid leave policies to determine whether the presumption of compliance applies
4. Evaluate your goals to either be presumed compliant by modifying your current policy or add a paid medical leave policy
5. Consider whether your goals are best met with a front-loaded or accrual system



STEPS FOR PMLA COMPLIANCE (CON'T)

6. Articulate the specific reasons for use of paid medical leave
7. Establish limits on use of paid medical leave
8. Establish limits on payout of paid medical leave on termination of employment
9. Request documentation to support request for leave and confirm compliance with policy
10. Consider the interplay with other leave laws



COVERED EMPLOYERS UNDER PMLA

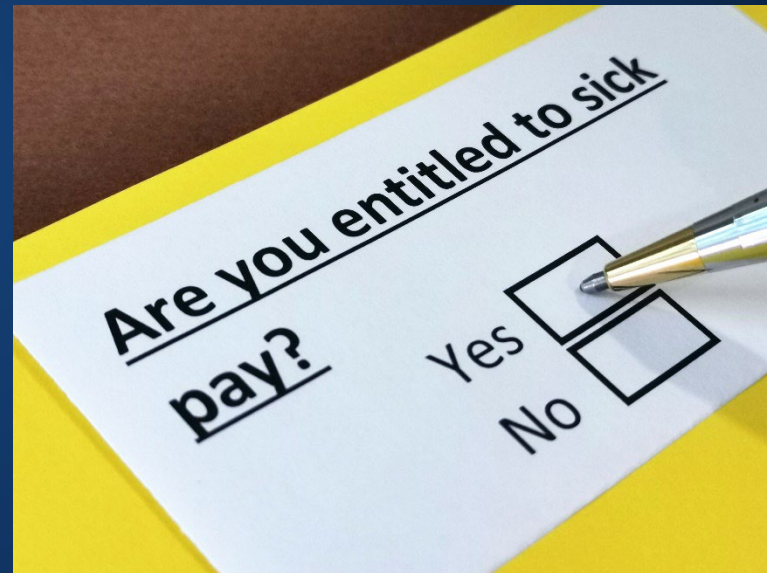
Employers...Does the PMLA Apply to You?

The Paid Medical Leave Act applies to employers with 50 or more employees

EMPLOYEES ELIGIBLE FOR PMLA

Which Employees are Eligible?

- Individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes.
- This broad definition is subject to a number of exceptions.



EMPLOYEES ELIGIBLE FOR PMLA

Which Employees Are Ineligible for Paid Medical Leave?

- Exempt employees
- Employees who worked fewer than 25 hours per week, on average, during the previous calendar year
- Employees who are employed for less than 25 weeks in a calendar year, for a job scheduled for 25 weeks or fewer
- Variable hour employees, as the term is used in the ACA
- Employees who receive a trainee wage
- Temporary employees, as described in Michigan Employment Security Act
- Private employees subject to a CBA
- Out of state employees
- U.S. government employees
- Air carrier employees
- Employees subject to the Railway Labor Act

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EMPLOYEES ELIGIBLE FOR PMLA

Only NON-EXEMPT Employees Are Eligible

- What does it mean to be Non-Exempt?
 - Employees who are NOT exempt from overtime rules under the FLSA
- Generally whether an employee is exempt or non-exempt depends on the following criteria:
 - Employee must be paid at least \$35,568/year or \$684 per week on a salary basis.
 - Employee must perform job duties that meet certain criteria (i.e., executives, professionals, administrators, outside salespersons, and others).

EMPLOYEES ELIGIBLE FOR PMLA

Ineligible Employees

- Variable hour employee
 - The term variable hour employee means an employee if, based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain. 26 CFR 54.4980H-1
- Trainee Wage
 - New employee under age 20, who is paid a training hourly wage for the first 90 days of employment under the Improved Workforce Opportunity Act.

EMPLOYEES ELIGIBLE FOR PMLA

Eligibility Takeaway:

Non-exempt employees who worked an average of 25 hours or more per week over the prior calendar year, and not otherwise ineligible

PRESUMPTION OF COMPLIANCE

Good News!

- If you have a policy that provides at least 40 hours of paid leave to all eligible employees each benefit year, there is a presumption of compliance with PMLA.
- Often times an existing policy is not fully compliant!

WHAT ARE YOUR GOALS?

How Do You Want to Comply?

- Create new policy granting full paid medical leave to all eligible employees, in addition to any existing leave.
- Employers who have a partially compliant policy in place can supplement the policy to comply with the PMLA. We call this the “fill in the gap” policy.

FRONT LOADED OR ACCRUAL?

What is a Benefit Year?

- A consecutive 12-month period used to calculate an employees benefits
- Paid medical leave benefit year can differ from benefit year for other benefits

FRONT-LOADED OR ACCRUAL?

Front-Loaded Basis

- If given at one time (front-loaded):
 - Minimum of 40 hours
 - Not required to carry over
 - Employees receive paid leave on the first day of employment, or on the effective date of the law

FRONT-LOADED OR ACCRUAL?

Accrual Basis

If accrual basis:

- Minimum of 1 hour per 35 hours worked
 - May cap at 1 hour per week
 - May cap at 40 hours per year
 - Must allow carryover from benefit year to benefit year, with rollover of at least 40 hours
 - Employers can cap leave use at 40 hours per benefit year

SPECIFIC REASONS FOR USE OF LEAVE

When Can an Employee Use Paid Medical Leave?



- If employee or defined family member needs leave for:
 - Recovery from mental or physical illness, injury, or condition
 - Medical diagnosis, care, or treatment
 - Preventative care
 - To obtain medical care or counseling, or other services (or participate in court proceedings) related to domestic violence or sexual assault
 - For closure of the employee's primary workplace, or to care for a child whose place of care has been closed, by order of a public official due to a public health emergency
 - If health care authorities or a provider determine that the presence of the employee or employee's family member in the community would jeopardize the health of others because of exposure to a communicable disease, regardless of whether the employee/family member contracted the communicable disease.

LIMITS ON USE AND PAYMENT OF LEAVE

- Employees can be prevented from using paid leave until the **90th day** of employment, but must grant the leave on front-loaded or accrual basis on **first day** of employment.
- Paid medical leave does not need to be paid out upon termination of employment, regardless of the reason.
- Payment is at the higher of:
 - Minimum wage; or
 - normal hourly wage or base wage (but not required to include overtime, holiday, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities)



REQUIRED POSTING AND TRACKING

- The law contains a posting requirement.
- Even if you have a policy presumed to be compliant, you still must post.
- Employers are required to track the number of hours an eligible employee works and the amount of paid medical leave accrued and taken.
- Must maintain these records for 1 year.



HOW DOES PMLA INTERACT WITH FMLA?

- These two leaves can be used concurrently – when applicable
 - PMLA eligibility starts before FMLA
 - Qualifying reasons for leave are not the same between the two laws, but similar in some respects
 - PMLA is paid; FMLA is unpaid leave



LOOKING AHEAD ...

THE POSSIBILITIES OF WHAT MAY COME ...

- With the likely appeal to the Michigan Supreme Court, the Court may choose to leave the PMLA in place or to reverse the Court of Appeals and allow the ESTA provisions to go into effect
- With the shifting makeup of the Michigan Legislature, the Legislature could also decide to amend, repeal, or replace Michigan's paid medical leave laws at any time

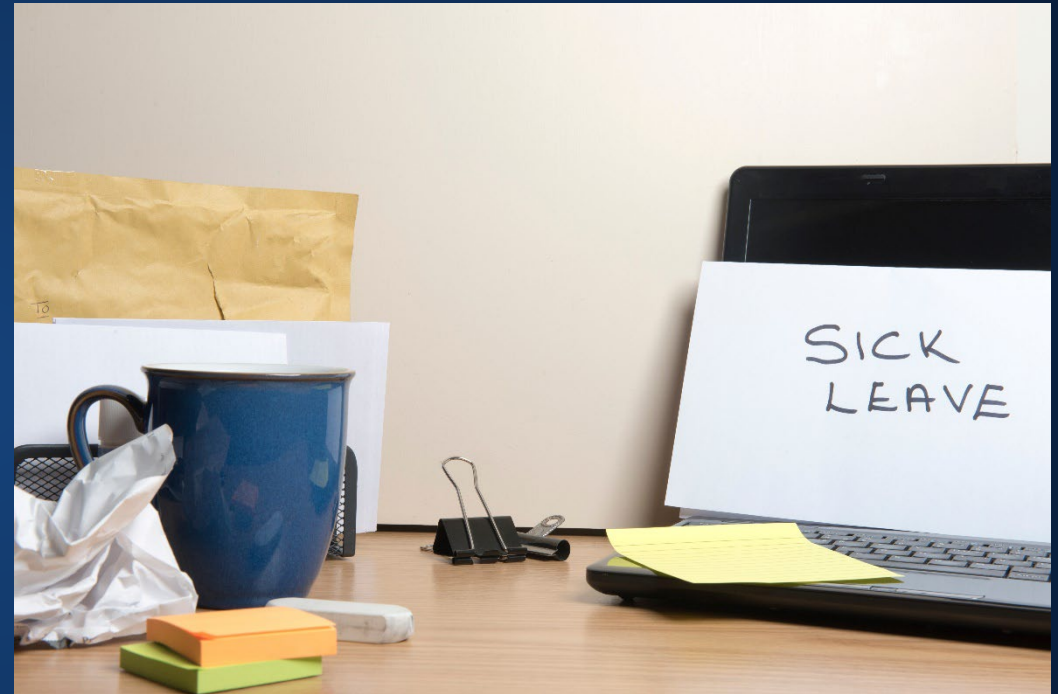


WHAT WOULD HAVE BEEN REQUIRED UNDER ESTA?

- All employers are covered employers (except United States Government employees)
- Small employers (fewer than 10 employees) required to give 40 hours of paid earned sick time per year and up to an additional 32 hours of unpaid earned sick time per year
- Large employers (10 or more employees) required to give 72 hours of paid earned sick time per year
- All employees are eligible for earned sick time (including part-time and temporary employees)

HOW CAN YOU STAY UPDATED AND COMPLIANT?

- Follow Maddin Hauser on social media, join our e-mail list, and engage with us to be informed of these updates.
- Contact us if your policies need to be reviewed for compliance





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THANK YOU

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