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**Michigan's 2025 Labor Laws Explained:
Live Q&A Webinar: Earned Sick Time Act/Minimum Wage
Nov. 19, 2024 | Butzel
(Updated Dec. 5, 2024)**

- Q:** Can we rename or reclassify our current vacation time to Earned Sick time to lower the vacation time by 1 week and add 1 week of Sick Time (this is a simple example).
- A:** Yes, you can reclassify your current offerings to comply with ESTA requirements. In other words, you are not required to add an additional 72 hours of sick time on top of what you already provide.
- Q:** We are a Service-Disabled Veteran Owned Small Business and are required to follow the Federal Davis Bacon Wages laws dictated by the VA on the jobs we perform for them, do we have to follow the same Earned Sick Time laws for these employees?
- A:** Yes, ESTA is in addition to other federal, state and local wage and hour requirements.
- Q:** We are a nonprofit and wondering if the rules for us will be any different?
- A:** Nonprofits are included as businesses in the Earned Sick Time Act. The rules will be applied the same to nonprofits as all other employers.
- Q:** Are the PLMA and ESTA different banks of hours?
- A:** The ESTA is replacing the PMLA as of February 21, 2025.
- Q:** Can we advance PTO and not roll over? Do we need to have a separate bucket for sick time? Can we have one bucket for PTO and they can use it for whatever they want - or if they use their 3 weeks PTO for vacation, we still have to give additional PTO - if so, how can we control it?
- A:** Advancing PTO does not negate the carry over requirement under ESTA. No, you are not required to have a separate bucket for sick time. Yes, you can have one bucket for PTO that can be used for any reason, including ESTA purposes. If you have one bucket that can be used for any reason, you are not required to give an employee extra PTO for sick time if they used it all for non-sick time purposes (e.g., vacation).
- Q:** Our timekeeping system uses 6-minutes increments. Do we have to allow employees to use the earned sick time in 6-minute increments or can we continue to use the policy employees have to use no less than 1-hour increments?
- A:** If you use 1/10th (6 minutes) of an hour for tracking attendance/absences, then this would be the increment that must be used for the earned sick time.
- Q:** What are the requirements for providing sick time for salaried employees? They do not clock in/out on a time clock. Currently, salaries are based on 32 hours/week and include 3 weeks' vacation, 1 week sick time and 1 week continuing education time.
- A:** Exempt/salaried workers also covered by ESTA. Although cumulatively it appears that you are providing more than 72 hours of paid leave time for vacation and

sick, your individual sick policy only provides for 40 hours (which is less than 72-hour requirement under ESTA). As such, you may want to review your plan design. As to the accrual rate for the exempt employees, they are "assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.

Q: How long do they have to make changes to the ESTA? Is there a deadline so that we will know it's finalized, and we can start building our policies in our HRIS systems?

A: There is not a firm deadline to make changes to ESTA. Wendy Block will provide some discussion of what the Michigan Chamber is doing to get some commonsense changes made to the ESTA. However, employers should start preparing like the current version of the bill will go into effect on February 21, 2025.

Q: Do overtime hours over 40 hours worked count towards sick leave accrual for exempt associates? Differentiate those exempt associates who are tracking hours worked (STOT over 40 or 50 hours) vs. non-OT eligible.

A: The statute is not clear on this issue and LEO has not provided clear guidance to date. The statute says you can assume that exempt employees are working 40 hours a week. If they are working more than that on a regular basis, the conservative approach would be to include that time for accrual purposes. Overtime hours count towards the sick leave accrual for non-exempt employees.

Q: If we start in February, is it still 72 hours that can be earned for the 2024 calendar year, or can it be prorated?

A: It depends on what you define as your year for ESTA purposes. Employees must start accruing sick time at 1 hour for every 30 hours worked on February 21, 2025. In theory, an employee could accrue more than 72 hours this calendar year even though ESTA does not take effect until February.

Q: Does short-term disability run concurrent with the sick time leave?

A: This is not addressed under the statute, but presumably ESTA time can run concurrently with STD. We are waiting for further guidance from LEO on this issue.

Q: Can we force associates to use sick time leave before they use short-term disability?

A: This is not addressed under the statute, but an employer may be able to require employees to use sick time before STD. We are waiting for further guidance from LEO on this issue.

Q: Can we have separate Sick Time policies/practices for our hourly vs. salaried associates?

A: Yes, you can have different systems for different classes of employees so long as you are complying with the ESTA requirements (e.g. increment, accrual, carryover, etc.)

Q: Are associates who are paid out of Michigan, but physically working in other states covered by the act?

- A:** Employees who work in other states are not covered by ESTA.
- Q:** Highest Rate – Does this refer to the highest base rate or is it the highest rate from the previous week? For example, receiving OT the week prior does that increase the rate at which you pay out the earned sick time hours?
- A:** This is an open issue that we are waiting on further guidance from LEO. The statute says “normal hourly wage,” which would suggest the employee must be paid their base rate. The LEO FAQs use the term "regular rate", which would mean that OT and things of that nature could increase the employee's ESTA pay rate.
- Q:** Someone calls in sick and don't ask for sick pay; can they retroactively apply sick pay to taking time off for being sick? Does the same apply if they call in absent without indicating the reason for their absence?
- A:** It depends on how much later they are asking for sick leave to apply. If it is a couple of minutes or hours after calling in sick, then it may be worth it to give the employee the benefit of the doubt. However, the employee likely can't retroactively designate ESTA time because it would not comply with an employer's notice requirements and the notice requirements of ESTA. The same answers would apply if the employee does not indicate the reason for their absence.
- Q:** If all the time is used and the employee misses a day or calls in prior to receiving more, what happens and how is it handled?
- A:** You could handle that under your traditional attendance policy because the time would not be protected ESTA time.
- Q:** If an associate shows up 30 minutes late and wants to use sick time for those 30 minutes they can't be punished. However, can we send them home because they were already replaced on the line? Is there a reasonable time limit where we can send someone home for coming in late and claiming sick time?
- A:** The ESTA requires notice to be given as soon as practicable. This will be a fact specific inquiry depending on the circumstances. There may be a policy drafting solution to your question. Sending someone home for being late under ESTA reasons could be considered retaliation under ESTA.
- Q:** With the new ESTA – do employees state to us that they want to be paid X hours for being off sick, or do we automatically pay them if they are off sick and have accumulated the sick time for it?
- A:** This is not clear under the statute, but the employee likely needs to indicate they want to use ESTA time and how much. I would certainly inform the employee that they have ESTA time available to cover their absence.
- Q:** Where do co-op students fall into this?
- A:** Unfortunately, there is no exception under ESTA for temporary employees or co-op students. All employees, regardless of their status, are entitled to accrue and use paid sick time. That means all full-time, part-time, seasonal, temporary staff and paid interns are included.
- Q:** Can you send employee to a company health provider?

- A:** Yes, but only they are off for more than 3 consecutive days of ESTA time. You will be required to pay the employee's out of pocket expenses, if any, associate with visiting the health provider.
- Q:** Do we have options? Rollover hours / Payout at the end of the year / Rollover with a cap on # of accrued hours?
- A:** Carrying over earned sick time hours is required by the ESTA. LEO FAQs indicate that you cannot pay out any sick time at year end. Instead, employees must be allowed to carry over all unused sick time. You cannot cap the rollover amount, but you can cap the amount of leave an employee can use each year (72 hours is the lowest cap permitted under the ESTA).
- Q:** Temp through staffing companies; after their '90 days' and are hired into your company, when do their accrual hours begin? While on staffing or when they become an employee?
- A:** The LEO FAQs are silent on this issue, but it likely depends on whether the individual is your employee. When they start as an employee of your company, that is when they begin accruing sick leave hours.
- Q:** Is there any consideration for those that do shift work (i.e., first responders that work a 24-hour shift)?
- A:** Shift workers are included as employees in ESTA. Employees accrue earned sick time hours according to hours worked.
- Q:** If we frontload, can we blend sick time with personal time if there are at least 72 hours of paid sick time available? And if yes, and they use all available time for whatever reason and then fall ill, are we obligated to provide more paid sick time?
- A:** Yes, you can have one bank of time as long as it complies with all ESTA requirements (accrual, carryover, etc.). You would not be required to give them more sick time in that situation.
- Q:** The collective bargaining agreement terminates on 12/31/25. Should we have a letter/memo of understanding written and make changes 2/21/24 or wait until the agreement expires?
- A:** No, you are not required to create a letter or MOU to make the changes. You could go that route if you choose to do so. However, the statute says ESTA does not apply until that CBA expires. Following the presentation, LEO released new FAQs that address this issue. The new FAQs say that if a CBA is silent on sick time or sick leave benefits then ESTA applies to those employees on February 21, 2025.
- Q:** Can you use an existing PTO policy for the 72 hours of ESTA time as long as the employee has at least 72 hours of PTO?
- A:** Yes, but the policy also has to comply with the accrual, carryover, and other requirements of ESTA.
- Q:** If employees earn 72 hours of paid sick time each year on their anniversary year, how will this affect us? We will enforce the cap of 72 hours annually as we have 15 employees. Do we have to track hours for non-paid time? Does our attendance policy now go out the window as now if an employee has >8 unexcused absences in a year they are subject to termination?

- A:** You can enforce the 72-hour usage cap, but you must allow employees to accrue more than 72 hours if they work enough. I am not sure what you mean by track hours for non-paid time, but you are not required to accrue ESTA hours for hours not worked. You cannot discipline an employee under your attendance policy for any absences that are covered by ESTA.
- Q:** We administer a short-term disability program in house that is salary continuation for up to 90 days before LTD pays. Can we count ESTA use toward the salary continuation countdown?
- A:** This issue is not specifically addressed by the statute and LEO has not addressed this issue yet, but yes, you are probably able to count ESTA time for the salary continuation countdown.
- Q:** We are leaning toward front loading 72 ESTA hours for full-time employees. What is best practice for part-time employees to ensure compliance?
- A:** It depends on the needs of every business. For part-time employees, it would make sense to make the part-time employees accrue time because they will likely not earn 72 hours in a given year.
- Q:** What is thought to be best practice as to when to begin the year (12 months) if employer uses a front loading approach, new calendar year replenishes vacation and sick time banks, does it make sense to have ESTA run on 12 months effective with the 2-21-2025 effective date of the ESTA regulations?
- A:** It will depend on the needs of every business. The most common method of doing it is calendar year or ESTA effective date for simplicity's sake.
- Q:** Companies with bonus plans that make a reduction to the bonus payout based on the number of sick hours used, is this considered 'penalization' under ESTA?
- A:** Yes, that is likely considered retaliation under ESTA and you should modify your policy so it does not factor in sick hours used.
- Q:** Based on the employer having over 10 employees:
- 1.** I understand there is no cap for earning sick time at 1 hour for every 30 hours worked, but is it correct we are to only pay out a maximum of 72 hours (if accrued) for the year?
 - 2.** Does the employee need to request to be paid "X" number of ESTA hours if off work, or do we automatically pay a specific number of accrued hours?
 - 3.** Our payroll pays by the minute worked. Does this mean we need to pay "X" minutes of accrued ESTA hours? Or can we pay for "X" accrued hours? (For example, an employee is gone to a dentist appointment for 45 minutes).
 - 4.** To be paid from the ESTA accrued, must employees tell us why they aren't working (so we note it as a legitimate reason)?
 - 5.** Is this true? Any employee who was terminated and is rehired within 6 months – must we reinstate their accrued ESTA balance?
 - 6.** Must we start the first year of ESTA accrual on February 21, 2025, or can it be started on April 1
- A:**
- 1.** You are only required to let employees use 72 hours in a year, but there is no cap on accrual of time.
 - 2.** This is not defined under the statute, but I would ask the employees how much ESTA time they want to use.

3. ESTA requires you to pay time off in the same increment as your payroll system. So if your employee was out 45 minutes for qualified ESTA reasons, they would be paid 45 minutes. As to accrual, an employee accrues 1 hour for every 30 hours worked.

4. The statute says you cannot require disclosure of details of the employee's medical condition, but you can ask questions to ensure the employee is using the time for an ESTA qualifying reason.

5. Yes

6. ESTA takes effect on February 21, 2025, including accrual requirements.

Q: Do we have to offer a minimum of 72 hours a year or is this something that is accrued and does this policy also go into effect for salaried and hourly employees?

A: You do not have to front load 72 hours, you just have to give employees 1 hour for every 30 hours worked, which could be less than 72 or more than 72 hours each year depending the number of hours actually worked. Yes, this statute applies to both salaried and hourly employees.

Q: Regarding the new salary threshold of \$58,656. It states that we are still able to use non-discretionary bonuses and commission. However, if these are paid out on a quarterly basis or at year end, how do we account for this because OT is supposed to be paid out when worked. Would we have to pay out the OT during that pay period and then adjust commission \$s accordingly or the year-end bonus?

A: The new salary threshold was recently struck down by a judge in Texas. We have a client alert on our website that discusses the issue. (<https://www.butzel.com/alert-texas-federal-district-court-strikes-down-salary-threshold-increase-again>).

Q: How about temporary 1099 employees and subcontractors?

A: 1099 workers are not covered under ESTA. If the subcontractors are also 1099 workers, then they would not be covered by the ESTA.

Q: Will you be providing mock policies to assist employers with putting policies together?

A: We are looking into this but waiting to see what, if anything, the Legislature does to address the flaws and issues with the Act.

Q: If an employee tries to use "sick pay" and the employer knows 100% it's not for any of the qualified reasons, can we deny the request? How does an employer protect themselves in this he said/she said situation?

A: In this hypothetical, the employer could deny the request because the employee is not using the time for ESTA purposes. The best way to protect yourself is to document the situation in the employee's personnel file.

Q: I've read that if an employee accumulates 40 hours of earned sick time and the employer caps paid sick time at 40 hours, the employee must be allowed to accrue an additional 32 hours of unpaid sick time. Can you clarify if this is accurate? Can an employer cap paid ESTA at 40 hours?

A: That cap would only apply to small employers of less than 10 employees. Larger employers cannot cap paid sick time at 40. Instead, large employers can cap an employee from using more than 72 hours of ESTA time in a year.

- Q:** Does the 12-month year have to be the same for all employees or can it be based on anniversary dates?
- A:** An employer can define its own 12-month period, and this can be based on the employee's anniversary date.
- Q:** Is 72 hours the max accrued amount? If we front load the 72 hours, do we need to accrue still?
- A:** No, there is no accrual cap in the statute (although most employees won't get above 72 hours in a year). Yes, you still need to track hours even if you frontload for those rare instances in which your employee would be entitled to more than the 72 hours that were frontloaded.
- Q:** For commission-based employees, do they need to start tracking hours worked so they can accrue time under the ESTA?
- A:** If they are exempt employees, you can presume their normal work week is 40 hours according to the statute; otherwise, you will have to track their time for ESTA accrual purposes.
- Q:** If we have 5 employees in MI do we offer 72 hours or 40 Hours of sick time?
- A:** For smaller employers, an employee is entitled to 72 hours of time off for ESTA purposes, but only the first 40 hours have to be paid leave. In determining whether you are a large or small employer for ESTA purposes, you must count all employees in the United States.
- Q:** We currently pay employees for unused sick time at the end of the year. I am unclear if this can be done.
- A:** After the November 19th webinar, LEO issued additional FAQs indicating that this this would be unlawful under the ESTA. All accrued but unused sick time must be carried over to the following year.
- Q:** If we pay our part-time employees time and a half when they work a holiday will we have to pay them time and half if they take ESTA hours for that day?
- A:** ESTA requires you pay to your employee the normal hourly wage for their ESTA time.
- Q:** What about an Individual LLC Contracting business and sub-contractors?
- A:** ESTA only applies to employees. The LLC would be responsible for providing ESTA time to its employees.
- Q:** What progress (if any) has the Chamber made with the government?
- A:** We are continuing to work on the Governor and legislative leaders. Unfortunately, we do not yet have a deal.
- Q:** Do we have to allow roll over?
- A:** ESTA requires carryover of all ESTA, but you can limit an employee from using more than 72 hours of sick leave in a year and/or not pay out unused sick time at the time of termination.
- Q:** Will you provide updates regarding any amendments and status?

A: We covered the 5 key questions. Legislation has been introduced but is still being negotiated.

Q: We currently pay our employees for any unused PTO time on their anniversary date – has it been decided whether we can do this for ESTA vs. carry over?

A: After the November 19th webinar, LEO issued additional FAQs indicating that this this would be unlawful under the ESTA. All accrued but unused sick time must be carried over to the following year.

Q: Can you front load PTO/ESTA for salaried employees and use the accrual method for hourly? Or do you have to have the whole company in the same method? In the past policy, MPLMA, we only accrued for the first year of employment on hourly personnel. Then it was frontloaded on their anniversary.

A: Yes, you can administer sick time differently for different classifications.

Q: If we offer a "PTO" policy which allows employees up to 2 weeks (80 hours) off, is this sufficient for the ESTA leave? If so, do we have to allow for employees to carry over the unused hours?

A: Yes, as long as they can use that time for ESTA purposes. Yes, you must permit the carryover of unused hours.

Q: If this law goes into effect in the it will crush our business and many, many businesses. What is the Michigan Chamber proposing and working with legislators to make changes to this law? How close will it be to what we now have in the place that was adopted and amended?

A: We agree and are tunnel vision on trying to get changes across the finish line. There are 9 session days left in the 2023-24 legislative session, and we do not yet have a deal, unfortunately. We will know by 12/20 whether this will be done by the end of the year.

Q: Any resources for summer camps? We pay a rate for the season (not hourly) since staff work 24 hours a week at a time.

A: Unfortunately, summer camps are not excluded from the statute. You will need to do the math to determine the employee's normal hourly wage (hours worked divided by amount paid).

Q: Is part-time prorated? Or are part-time employees given 72 hours as well?

A: The same accrual rate applies to all employees regardless of status. Employees are entitled to accrue 1 hour for every 30 hours worked. This means that part time employees will likely accrue far less than 72 hours each year.

Q: We have more than 10 employees in our company, however less than 10 live and work in Michigan. Which group do we fall in? In other words, is the minimum paid sick time 40 hours or 72?

A: The new LEO FAQs indicate that employers must include all employees in the United States for determining if they are a large employer under ESTA. This means the minimum paid sick time would be 72 hours for your company and your company would only be required to follow ESTA for your Michigan-based employees.

- Q:** Regarding CBAs and ESTA not applying until they expire, is that all CBAs, or only CBAs that currently include vacation?
- A:** All CBAs will stand if they go into effect prior to Feb 21, 2025. However, after the November 19th webinar, LEO issued additional FAQs indicating that ESTA will apply to CBAs on February 21, 2025 that are silent on sick time or sick leave benefits. ESTA will not apply to CBAs that address sick time until the CBA expires.
- Q:** Election workers?
- A:** If they are W2 employees, they would technically be covered by ESTA.
- Q:** How do you calculate 72 hours per year based on a 2080-hour work year?
 $2080/30\text{hrs}=69.3333$. We calculate the 2080 hours as such; $52\text{ weeks} \times 5\text{ days} = 260 \times 8 = 2080$.
- A:** You are correct that mathematically most fulltime employees will not accrue 72 hours based on a standard workweek.
- Q:** Regarding the 90 days of employment before time can be used. If someone works 60 days, is laid off, is called back within the 6-month period, does the 90 days wait start over? Or is he allowed to use time after only 30 days?
- A:** ESTA provides “an employer may require an Employee ... to wait until the ninetieth calendar day after commencing employment before using accrued earned sick time.” As Act uses “calendar days after commencing employment”, the most conservative route is to allow use after return.
- Q:** What if we DO choose to payout on termination, but then rehire within 6 months, would we not have to reinstate since we already paid it?
- A:** This is not addressed by LEO FAQs, but it seems unlikely you would have to restore the time if it is already paid out as ESTA states “the employer shall reinstate previously accrued unused earned sick time”.
- Q:** I work with independent salesman which earn commissions only. They are not employees, and we pay their LLC or Corp. Do I need to provide ESTA?
- A:** No, so long as they are 1099 workers.
- Q:** Can you clarify the 90 days, I thought employees could start accruing and start using at day 1?
- A:** Yes, they start accruing on day 1, but you can require employees to work 90 days before using this time.
- Q:** Just to clarify, can we make a new hire wait 90 days before they are able to utilize their paid sick time if we front load it?
- A:** That is correct. Employers can implement a 90-day wait period before employees are allowed to use sick time.
- Q:** If our timekeeping system uses 6-minute increments, is that the allowed time employees can use?
- A:** Yes.
- Q:** Can part time employees use the sick time on a non-working scheduled day? Or should it be used on a scheduled day that the employee is going to miss?

A: This is not specifically addressed by the statute or the LEO FAQs, however our position is that you cannot use sick time on a day you were not scheduled to work.

Q: So larger employers must provide 72 hours of paid sick time even if the employee does not accrue that much time?

A: Employers must provide up to 72 hours. An employee accrues one hour per every 30 hours worked. You do not have to provide the sick time until it is accrued by the employee.

Q: So larger employers must provide 72 hours of paid sick time even if the employee does not accrue that much time?

A: No, many employers choose to front load 72 hours because employers can cap employee's from using more than 72 hours of sick leave per year. Employers must only provide employees with 1 hour of sick leave for every 30 hours worked.

Q: The verbiage used here is different than previously. ESTA says accrual of 1 hour per 30 hours worked and no cap on carryover. Now you're saying "You only have to give them 72 hours"... "No, you only must let them USE 72 hours." The statute doesn't say cap accruals at 72. It says the opposite, doesn't it? You have to let them accrue 1 hour per 30 worked, regardless of how much time that adds up to.

A: This is a great question. There is no cap on how much employees accrue. There is, however, a cap on usage per year. Thus, an employee may accrue a large number of hours after years of work, but you can allow them to only use 72 hours per year.

Q: Can we still address tardiness, even if they use ESTA?

A: If they communicate that their tardiness is earned sick time, we recommend not addressing it because of retaliation considerations.

Q: If an employee has used all 72 hours in a year, can they be held accountable for calling off sick or does that time still count as ESTA?

A: If they have used all of their accrued earned sick time hours, they can be held accountable for any other absences according to your attendance policy.

Q: If we have existing policies that require use in 4-hour increments, can we require that ESTA be taken in 4-hour increments? Or do we have to change to the lowest tracked amount in our payroll system? For example, our timekeeping system tracks down to the minute, so we would have to allow an employee to take say 3 minutes of ESTA?

A: No, at this time ESTA is clear that increments should be used in the smaller of hourly increments OR the smallest increment that the payroll system uses to account for absences of use of other time. In your example, you would have to allow the employee to take 3 minutes of ESTA.

Q: Can we just put vacation time as sick time and accomplish the ESTA time requirement?

A: Yes, as long as it complies with the other requirements under ESTA, such as increments, notice, accrual, and carryover.

Q: Can we implement it early (1/1/2025) to keep it clean with our current benefit year?

A: After the November 19th seminar, LEO issued additional FAQs in which it answered that “[a]ccrual begins on Feb. 21, 2025” to the inquiry “when does an eligible employee begin to accrue earned sick time?”. At this time, it is unclear how this would impact a company whose benefit year begins on January 1st.

Q: Would the unused time from one year roll into the next year?

A: Yes, it will rollover or carryover.

Q: What about providers who have employment agreements that have a front-loaded PTO balance?

A: ESTA allows you to frontload as well. Alternatively, you may want to consider having two separate policies, one for earned sick time, and one for PTO. This is an industry and fact specific consideration.

Q: Can we accrual for part time employees and frontload for full time employees?

A: Yes, you can have separate policies for different classifications of employees so long as both they comply with ESTA.

Q: Front load time is based on an assumption of staff hours?

A: Yes, it is based on the idea that employees will accrue that time during the year.

Q: Can they earn a fraction of 1 hour? i.e. We have a number of seasonal/part-time people working 10-20 hours per week.

A: No, they cannot earn a fraction of an hour. But they could potentially use the time in fractions of an hour.

Q: If you front load 72 hours, but they actually earn more than 72, when does it need to be reconciled?

A: The new FAQs say this should be evaluated at least annually.

Q: What is the purpose of carryforward if we frontload every year since we don't have to give more than 72 hours every year?

A: I think this is a defect in the statute that will hopefully be amended. The one benefit would be that you don't run into issues of employees trying to use sick time before they accrued it or before you have determined it has been accrued (i.e. mid pay period).

Q: How would you track salary employees who do not use a timesheet?

A: ESTA says you can assume exempt employees work 40 hours in a normal work week. Specifically, the Act states that for exempt employees it “is assumed to work 40 hours in each workweek unless the employee’s normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.”

Q: Can you give a 3-week bucket, and they use it for vacation, then do you have to have extra sick time pay?

A: No, if they can use that 3-week bucket for ESTA purposes then you are not required to provide them extra sick time because they used all available time for vacation.

Q: Can the wait period be longer than 90 days?

A: No, 90 days is the longest period allowed.

Q: Can you front load at 90 days since you can require employees to wait 90 days to use?

A: You can frontload but then require the employee to work 90 days before using.

Q: Isn't there a bill with the State of MI to clarify tracking/rollover of time if you front load?

A: There is – [HB 6056](#). This is what we consider a “vehicle bill” – basically a bare bones bill that could be amended to address many of the items we've identified as problematic. This is still being negotiated.

Q: Can you front load for full-time employees but accrue for part-time employees? If you front load part-time employees, does it not make a difference how many they would have earned?

A: Yes, you can do it differently for full-time and part-time employees. You still need to track accrual if you front load in case they earn more time than front loaded. For part-time employees, it may make sense to front load less time than you front load for full-time employees.

Q: Do you have to roll over last year's unused hours? Since the policy is beginning in 2025?

A: No, you will only have to roll over unused time starting on or after February 21, 2025.

Q: If we pay on a bi-weekly basis but accrue paid time off monthly, can we do the same with ESTA?

A: Time is accrued based on hours worked. If the employee is using earned sick time and there is a question according to the current pay period, the conservative approach is to allow the use of earned sick time.

Q: For a municipality: boards, commissions, council, and the Fire Dept are paid by meeting, not by length of meeting and are volunteer based. Is this still required for them and how would we track?

A: After the November 19th webinar, LEO issued additional FAQs which states that “publicly elected officials, members of publicly appointed boards and commissions, and similar public office holders are not considered employees for purposes of ESTA, even if paid or receiving some form compensation, unless the governing entity treats these individuals as employees.”

Q: If an employee uses all their ESTA time and is now using unpaid sick time, can there be disciplinary action?

A: If they have used all their earned sick time or are taking time off that is not earned sick time, you may enforce other attendance policy or company-specific notice requirements.

Q: Can ESTA be used for maternity leave?

A: Yes, that would qualify.

- Q:** What if an employee tells a supervisor in advance that if they are scheduled to work that day, they won't come in that Friday and claim ESTA leave since a doctor's note isn't required until after three days?
- A:** After the November 19th webinar, LEO issued additional FAQs which states that "If an employer is unsure, they may ask additional questions about the nature of the leave to determine if the leave meets the eligible uses."
- Q:** Would jury duty time accrue hours?
- A:** No, it would not because it is not hours worked.
- Q:** Can you deny a request for use of ESTA? Specifically, if you know it doesn't fall under the reasons covered?
- A:** Yes, employees cannot use ESTA time for non-ESTA purposes.
- Q:** How does this affect my attendance policy? Right now, a person that has nine unexcused absences in a 12-month period will be terminated.
- A:** Your attendance policy will be affected. An employee must be able to use the earned sick time they accrue after the effective date of the act. Your policy can set forth that they may only use the time as they accrue it, and any extra time used by the employee can be addressed by such an attendance policy.
- Q:** How soon can a new hire utilize ESTA time?
- A:** This is up to the employer. An employer has the option to apply the 90-day wait period. However, an employer may choose to allow the new hire to start using the accrued time right away.
- Q:** How about commission employees? Can we pay minimum wage?
- A:** All employees are covered by ESTA. The company would have to pay the normal hourly wage (total commissions divided by hours worked) or the minimum wage, whichever is greater.
- Q:** When paying ESTA time on a Tuesday and an employee gets past 40 hours, does ESTA time count toward their 40 hours bumping them into overtime pay when they come back to work?
- A:** No, ESTA time would not count toward the 40 hours for overtime as overtime is only required for actual hours worked.
- Q:** I assume that the tracking of FMLA can be used concurrently with ESTA time.
- A:** Yes.
- Q:** If a company doesn't allow carryovers of sick time, do they now have to allow carryovers for all staff or just ESTA staff?
- A:** Carryover is required for all employees that have ESTA time.
- Q:** Does the accrual include overtime hours?
- A:** Yes, it would include overtime hours worked.
- Q:** What about commissioned employees? We are a hair salon, and the majority of our employees are paid on commission. How do calculate their paid time off rate? Also, if we transfer our employees to a 1099 system, are they exempt from ESTA?

A: All employees are covered by ESTA. The company would have to pay the normal hourly wage (total commissions divided by hours worked) or the minimum wage, whichever is greater.

Q: Are we required to provide visibility of the 'accrued' hours that the employee is not permitted to use to the employee? Can the carried over bucket be hidden from the employee?

A: This isn't clear in the statute, but I think you would have to make this information available to employees.

Q: Can we have a policy that states that the first 72 hours of sick time used automatically applies to our requirements related to ESTA, since our regular/benefit eligible employees receive more than 72 hours of sick time a year.

A: Your policy may already comply with ESTA as to amount but you need to ensure that it is compliant with the other requirements (increments, carryover, use, etc.).

Q: If you can only use 72 hours in a year, why are they allowing it to grow?

A: I believe it is a defect in the statute. Additionally, your policy can provide that there is no pay out of sick pay at termination.

Q: Does PTO time off count towards their accrual? If I take 80 hours of PTO this pay period, am I accruing any time in the pay period?

A: No, that would not be hours worked for ESTA purposes.

Q: We currently front load PTO at the beginning of each calendar year and pay out any unused time at year-end, followed by another front load on January 1st. Is this approach acceptable, and are there any potential disadvantages to this practice?

A: After the November 19th webinar, LEO issued additional FAQs indicating that this this would be unlawful under the ESTA. All accrued but unused sick time must be carried over to the following year.

Q: Do you have to keep track of accrual if you front load the 72 hours?

A: There is no accrual cap in the statute so the company will still need to track hours even if you frontload for those rare instances in which your employee would be entitled to more than the 72 hours that were frontloaded.

Q: If you front load a PTO time, do you still have to track the 1 hour for 30 hours worked?

A: No, there is no accrual cap in the statute (although most employees won't get above 72 hours in a year). Yes, you still need to track hours even if you frontload for those rare instances in which your employee would be entitled to more than the 72 hours that were frontloaded.

Q: My employees have a bank of "vacation" time. When they are using this time during the week, are they still accruing ESTA time while on vacation?

A: No, ESTA only applies to actual hours worked. It is recommended that you clearly state this in the policy that does not apply to leave, holidays, vacation, etc.

- Q:** The accrual is only for hours worked, not hours paid, right?
A: Yes, only actual hours worked – does not include leave time, holidays or vacation. Recommend that your policy clearly states this.
- Q:** Do employers have to pay out accrued time on separation?
A: No, but you are required to follow your policies. Make sure your employee policies indicate that you do not pay out sick time on separation.
- Q:** Do ESTA hours apply to FMLA hours entitlement?
A: Yes, you can use this time concurrently.
- Q:** Can the rolled over time be capped at any time? For example, the employee has rolled over time for three years and doesn't take the time, can there be a capped amount?
A: No, you cannot cap carryover. You can just cap the employee from using more than 72 hours in a year.
- Q:** Employers are not required to pay out at termination, correct?
A: Yes, correct.
- Q:** I don't understand how front loading complies with the "must earn 1 hour per 30 hours worked," especially for workers who are putting in a bunch of overtime. They may be eligible for MORE accrual than 72 in a year.
A: That is exactly right. You will still have to track the time worked by employees to make sure they do or don't accrue more than 72 hours. If they accrue more than 72 hours, you would be required to add that time to their bank.
- Q:** How do you accrue time on salaried individuals? Can you front load salary and accrue hourly?
A: This is specifically addressed in ESTA. For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek. (MCL 408.963(4) amended). Yes, you can have different methods for different classifications of employees so long as they are both compliant with ESTA.
- Q:** Our salaried employees are allowed 3 weeks PTO. They do not punch in/out. Do we still need to track hours worked for ESTA purposes?
A: Salaried employees or exempt employees are still eligible for ESTA. You do need to track hours and it is "assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek." (MCL 408.963 (4) amended).
- Q:** So if you have PTO for both vacation and sick time and someone uses all of it for vacation, do you have to offer more sick time then?
A: If you have PTO and ESTA together, and the employees know all of it MAY be used for earned sick time, then you do not have to offer more sick time (as long as it meets all of the other requirements of ESTA).

- Q:** Can we ask if the reason affects the employee's work?
A: Most likely not. If a person calls in and requests earned sick time, the conservative approach is to not ask for specifics due to retaliation considerations.
- Q:** How can we find out that the employee is going to a foreseeable event?
A: The employee must give the employer notice. You can set preferred notice requirements in your policy.
- Q:** Are you saying we must pay for the doctor's visit to get a doctor's note for more than 3 consecutive days?
A: You must pay for the employee's out of pocket expenses if you require the employee to get documentation for more than 3 consecutive days of earned sick time used.
- Q:** Can we track ESTA hours in parallel with PTO hours used during the year so that we are running out the 72 hours each time the employee takes paid time off?
A: This would be a scenario where you should consider the "one bucket" policy and ensure that employees know all 72 hours can be designated as ESTA hours.
- Q:** To require documentation – is it three consecutive days or consecutive shifts?
A: This is a great question, if the shifts are scheduled within three days of each other, probably three days. If the shifts are spread out over a week, we recommend waiting for the three consecutive scheduled shifts (missed due to ESTA) before requiring documentation.
- Q:** What about 12 and or 24-hour shifts? They are not always consecutive.
A: Employees will earn 1 hour for every 30 hours worked regardless of the shift scheduled.
- Q:** What if a part-time employee works 20 hours in a pay period (bi-weekly) and 20 hours the following pay period, would they then earn one hour of sick time? Or would they have to have worked 30 hours within the pay period to earn the 1 hour of sick time?
A: The employee will earn 1 hour for every 30 hours worked. So, following the proposed scenario, they would earn 1 hour every two weeks. It accrues based on hours worked, not by pay period.
- Q:** What if the employee does not call for the entirety of their shift?
A: This may still fall under "as soon as practicable" and earned sick time can be designated after the missed shift. While not ideal, employees must give notice "as soon as practicable" which is circumstantial and fact specific.
- Q:** We have a remote employee that is located in the UK; however, he does come to our offices every quarter for 2 weeks at a time. Do we have to give him the ESTA time for only the time he reports to the office?
A: No, employees who work outside of Michigan are not covered by ESTA. Since he does not primarily work in Michigan, you do not have to give him earned sick time.

- Q:** Do you have examples of policies for ESTA that we can see?
- A:** Some law firms may develop sample policies, including Butzel. Policies are tailored toward specific industries.
- Q:** Do ESTA hours accrue on anything besides actual hours worked? For example: vacation, bereavement, jury duty?
- A:** No, earned sick time accrues based on hours worked. We do not believe your examples constitute hours worked.
- Q:** As a seasonal employer, are we allowed to pay out the earned sick time at the end of our season and start over at the beginning of our next season?
- A:** The answer depends on whether the employee is terminated and rehired at the end of each season or just put on temporary layoff. If terminated, you are not required to payout unused ESTA time but you can. If on temporary layoff, you cannot payout but must carry over. After the November 19th webinar, LEO issued additional FAQs indicating that payout provisions would be unlawful under ESTA. All accrued but unused sick time must be carried over to the following year.
- Q:** Is there a MAXIMUM accrual or rollover for ESTA? Understand you can limit use to 72 hours per year.
- A:** Currently, there is no maximum accrual or rollover for ESTA.
- Q:** Can you clarify the requirements for small businesses under 10 employees?
- A:** Yes, they only have to provide 40 hours of paid sick leave and 32 hours of unpaid sick leave. All other requirements are the same.
- Q:** Is there a notice requirement of when you need to notify employees of current PTO policy changes?
- A:** There is not a hard and fast rule. I think it is best to do this at least a couple of weeks in advance and make sure each employee receives notice.
- Q:** Can you have different paid leave options by classification? Paid leave payout for full time, but not seasonal?
- A:** Yes, that is allowed.
- Q:** To verify...ESTA hours do NOT have to be paid out upon termination or if an employee quits?
- A:** Correct.
- Q:** If an employee is rehired within six months, can they start taking their accrued ESTA time right away? Or do they have to wait 90 days?
- A:** After the November 19th webinar, LEO issued LEO FAQs indicating that this is considered continued employment, and you cannot make the employee wait 90 days.
- Q:** What about employees who have been there for 10 years and already have 160 hours of PTO. Knowing we have to classify 72 of those hours as ESTA, would we still accrue? Or just front load and track all the ESTA time used?
- A:** This is a plan design question - do you want to include ESTA in your PTO policy or create a separate bucket? If you create two buckets then you can frontload PTO

and accrue ESTA. If you have one bucket, you need to follow one system (either accrual or frontload).

Q: For part-time temporary employees, would the proposed 90-day waiting period be counted toward ESTA once they pass the 90 days or does ESTA start after the 90 days?

A: You have to start accruing on the first day of employment. The 90-day limit is just for usage.

Q: If we start a new policy where EE's will accrue ESTA time, can we require ALL (not just new hires) to wait 90 days before using?

A: No, that is only allowed for new hires.