

MICHIGAN LAWMAKERS RUSH TO SMOOTH OVER PAID SICK LEAVE AND MINIMUM WAGE RULES SET TO TAKE EFFECT NEXT MONTH: 8 KEY TAKEAWAYS FOR EMPLOYERS

Insights
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Good news is *likely* coming for Michigan employers related to the state minimum wage and paid sick leave laws set to take effect February 21. Last week, both chambers of the state legislature introduced separate sets of bills to further amend these laws, which are on track to soon impose annual minimum wage increases, gradually eliminate the tip credit, and require vastly expanded paid sick leave rights. State lawmakers appear poised to push through some changes that could somewhat ease employers' burdens – though the specific changes that survive the legislative process, if any, remain to be seen and may not become finalized until *after* the state's sweeping changes take effect next month. We'll give you some quick background and context for these competing sets of bills, as well as eight key takeaways.

Quick Background

As chronicled [here](#) before, a 2024 Michigan Supreme Court decision reinstated 2018 voter-initiated versions of the state's minimum wage and paid sick leave laws, which are set to take effect on February 21, 2025. The relevant laws are the Earned Sick Time Act (ESTA) and the Improved Workforce Opportunity Wage Act (IWOWA). We previously covered the [new minimum wage rates and answers to your top ESTA questions](#).

Michigan's Divided, But Motivated, Government

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Michigan currently has a divided government, with Democrats narrowly controlling the state Senate and the Governor's Mansion, and Republicans holding a slim majority of House after regaining control of it in the November 2024 election. However, there appears to be an urgency within both chambers of Michigan's legislature to smooth over and clarify certain aspects of ESTA and IWOWA. Specifically, lawmakers just introduced the following bills:

- [HB 4001](#) and [SB 8](#), which propose changes to **IWOWA**; and
- [HB 4002](#) and [SB 15](#), which propose changes to **ESTA**.

8 Takeaways for Michigan Employers

We believe it is quite likely the state House and Senate will pass very different versions of bills on minimum wage and paid sick leave amendments, so the reconciliation process will ultimately determine what, if anything, will change. However, we identified some consistencies in the competing sets of bills and compiled eight key takeaways you should know about:

1. Any New Changes Will Likely Take Effect After February

21. With a divided government, the legislative process will take time, so any amendments would almost certainly take effect after February 21. As such, we recommend employers continue to act as if no amendments will be made and get their pay practices and paid leave policies in line with versions of ESTA and IWOWA greenlit by the Michigan Supreme Court last year.

2. Tip Credit Will Likely Remain. Both SB 8 and HB 4001 aim to permit employers to continue paying reduced wages (38% of the state's standard minimum wage) to certain workers who receive gratuities, so long as they make at least the standard minimum wage after factoring in tipped amounts). The proposed changes are in response to the version of IWOWA set to take effect next month, which will gradually increase the tipped hourly wage rate before eliminating the "tip credit" altogether in 2030. The Senate bill would gradually increase the tipped hourly wage rate to 60% of minimum wage by 2035, while HB 4001 would permanently keep it at 38% of minimum wage.

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3. Frontloading Sick Leave Will Likely Be Explicitly Permitted. Both SB 15 and HB 4002 explicitly allow employers to frontload the ESTA-required 72 hours of sick leave to employees instead of requiring employers to utilize an accrual process. ESTA currently does not explicitly address the situation, which has left some employers concerned. Note also that HB 4002 would allow an employer to prorate the 72 hours in an employee's first year based on when an employee was hired during the benefit year – but SB 15 does not have such a caveat.

4. Likely No More ESTA Private Right of Action. Both SB 15 and HB 4002 repeal the ESTA provision allowing an employee to bring a private right of action for an ESTA violation. An employee would now only be able to file an administrative charge with the state's Labor and Economic Opportunity (LEO) administrative agency.

5. ESTA's Rebuttable Presumption Provision Will Likely Be Removed (in Part). SB 15 and HB 4002 repeal the ESTA provision that would have forced employers to overcome a rebuttable presumption that the employer violated an employee's rights under ESTA if they took an adverse personnel action against the employee within 90 days of the employee taking one of five specific actions (such as informing another person about their rights under ESTA). The removal of this provision (in combination with a removal of the private right of action) means LEO would always carry the burden of proving any ESTA retaliation, interference, or discrimination claim. Note, however, both bills retain the rebuttable presumption that an ESTA violation has occurred if the employer either fails to maintain records that document the hours worked and earned sick time taken by an employee or "does not allow [LEO] reasonable access to those records."

6. FLSA Exempt Employees Will Likely Remain Covered by ESTA. Employees who are exempt from the federal Fair Labor Standards Act are still covered employees for ESTA purposes under both SB 15 and HB 4002.

7. There Will Likely Be a Carryover Cap of Some Kind for Accrual Employers: Both SB 15 and HB 4002 include permissible carryover caps for accrued and unused sick time at the end of the benefit year. This change would address the unlimited carryover concern employers have voiced. HB 4002 permits a 72-hour carryover cap, while SB 15 allows a carryover maximum of 144 or 288 hours

depending on whether the employer pays employees for unused qualifying sick time before the end of the benefit year.

8. The Smallest Possible Increment of ESTA Time Usage Will Likely Be 1 Hour: SB 15 and HB 4002 modify the permissible ESTA increment usage differently, but under both bills, the smallest possible increment would be one hour. This change would remove the possibility of an employer ever having to track ESTA usage in increments smaller than one hour just because the employer tracks other absences in smaller increments.

Note that like any other pieces of proposed legislation, these paid sick leave and minimum wage bills, while likely to pass, are subject to revisions or could get dropped altogether.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, any attorney in [our Detroit office](#), or any attorney in our [Wage and Hour Practice Group](#).