

## Michigan's New Paid Medical Leave Act

Michigan's new "Paid Medical Leave Act", designated as Public Act 369 of 2018 and assigned MCL 408.961, et. seq. (the "Act"), goes into effect on **March 29, 2019**. The good news for employers is that the law replaces and is far less onerous than the Earned Sick Time Act passed in September 2018, which otherwise would have taken effect. Under the Act, most employers with at least 50 employees will now be required to provide up to 40 hours of paid time off for eligible employees each year.



### Which Employers and Employees are Affected

Certain employers are exempt from the law, including those employing fewer than 50 individuals. Also, not all employees are covered by the law. The following types of individuals are not "eligible employees" as defined by the Act:

- Individuals who are exempt from overtime under the "white collar" exemption of the Fair Labor Standards Act;
- Individuals whose primary work site is not in Michigan;
- Seasonal employees (i.e. those employed for fewer than 25 weeks in a calendar year, for a job which is scheduled for 25 or fewer weeks);
- Part time employees (i.e. those working on average fewer than 25 hours/week); and
- Union members covered by a collective bargaining agreement.

### Paid Medical Leave Events

**Eligible employees are entitled to take up to 40 hours of paid time off or leave for any of the following reasons:**

- Employee's mental or physical illness;
- The employee's or family member's (i.e., spouse; biological, adopted, foster and step children; biological, foster and step parents; biological, foster, adopted and step siblings; grandparents; or grandchildren) mental or physical illness;
- Medical care counseling, relocation or participating in criminal or civil proceedings related to the employee or employee's family member being the victim of domestic violence or sexual assault; or
- Closure of the employee's place of work due to a public health emergency, to care for a child whose school or place of care has been closed due to a public health emergency, or if it has been determined by the health authorities that the employee or their family member needs to stay out of public due to exposure to a communicable disease.

Employers can request reasonable notice of the event and documentation (within three days), in accordance with the employer's leave policy. However, we generally caution against asking for doctor's notes, due to concerns regarding disabilities and protected health information.

### How Paid Leave is Provided

**There are three ways employers can satisfy the Act's paid time off requirement:**

1. Accrual method. Eligible employees must accrue paid leave at a rate of at least one (1) hour for every 35 hours worked or one (1) hour per week. The accrual can be capped at 40 hours per benefit year. Note that under this method, employers are required to permit employees to carry over not more than 40 hours from one benefit year to another.

2. Up front method. Employers can grant eligible employees at least 40 hours of paid leave at the beginning of each benefit year. Employers are not required to allow eligible employees to carry over any unused hours into the next year.
3. Combined paid leave method. There is a "rebuttable presumption" that an employer who provides at least 40 hours of "paid leave" or paid time off (PTO) to an eligible employee at the beginning of each benefit year is in compliance with the Act. This can include paid vacation days, paid personal days, paid sick days and other paid time off. A "rebuttable presumption" is not a guarantee of compliance and no regulations have yet been provided. It appears employers will not be required to segregate paid sick time from paid vacation or other paid time off to rely on this method.

Regardless of what method the employer uses, the paid medical leave begins to accrue upon the later of: (i) the effective date of the law (March 29, 2019); or (ii) the employee's start date. Employers can use any consecutive 12-month period as the "benefit" year; a calendar year, anniversary year, etc.

Generally, paid leave can be taken in one (1) hour increments. In the alternative, the employer can articulate in writing a different increment in its employee handbook or policy document.

### New Employees

Whichever paid leave method an employer uses, new employees must begin to accrue paid time off from their start date. Employers may require an eligible employee wait 90 days from his or her start date before using accrued paid time off, but not one (1) year as is often the trigger for vacation/PTO benefits. For employers using the up front method, the amount of paid leave for new employees can be prorated based upon their start date.

### Termination of Employment

Upon an employee's termination, employers are not required to pay eligible employees accrued and unused paid time off. While employers can terminate employees for violating the employer's leave policy, we caution against terminating a sick, injured or caregiver employee without legal guidance.

### Compliance with the Act

An employee who has been affected by an employer's violation of the Act has six (6) months to file a claim with the Department of Licensing and Regulatory Affairs. The Department will conduct an investigation and may mandate the employer pay the eligible employee all paid medical leave money owed to the employee. In addition, the Department may impose a fine of up to \$1,000 for each violation of the Act.

Employers are required to display a poster about employee's rights under the Act. The department will make these posters available to employers. Failure to properly display a poster can result in a fine of up to \$100 per violation. Employers must retain all records documenting the hours worked and paid medical leave taken by employees for at least one (1) year.

Note the Michigan Paid Medical Leave Act is separate from and in addition to employer obligations under the Family and Medical Leave Act, Americans with Disabilities Act and Michigan Persons with Disabilities Act.

**This memo is intended only as a general overview. If you have any questions or would like legal advice regarding the new Paid Medical Leave Act, possible revision of the company's existing PTO/vacation/sick day policy, or any other employment issue, please contact [David Lawrence](#) or [Stacey DiDomenico](#).**