



Your Destination
Of Opportunity



Paid Sick Leave

Public Act 338 of 2018 (Ballot Proposal Turned Law)	Legislative Changes (SB 1175, adopted 12/04/18)
<p>NO EXEMPTIONS. There are no exemptions for employers with existing paid leave policies or small employers. All employers will need to adjust their policies. Leave is available to exempt employees, temps, and independent contractors.</p>	<ul style="list-style-type: none"> • Only applies to employers who employ 50 or more employees. • Time begins to accrue on the effective date or date of hire, but the employer may allow new employees to wait 90 days before using their time. • Exempts employees exempt from FLSA overtime requirements, private sector employees covered by a collective bargaining agreement, temporary workers, employees who work in other states, independent contractors, variable hour employees, certain part-time and seasonal employees and flight deck, cabin crew and railroad workers. (Note: Part-time is defined as an individual who has worked, on average, fewer than 25 hours/week during the preceding calendar year. Seasonal employee is defined as an individual employed by an employer for 25 weeks or less in a calendar year for a job scheduled for 25 weeks or fewer.)

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<p>ACCRUAL AND CARRY-OVER. Employees accrue 1 hour of paid sick leave for every 30 hours worked. All employees would be entitled to use 72 hours in a year. Employees working for employers with 10 or less employees would be entitled to use 40 hours of paid leave, 32 hours of unpaid leave. Although the employer could limit use to 72 hours per year, all time must be carried over from year to year (no cap).</p>	<ul style="list-style-type: none"> • The bill specifies employees would accrue 1 hour of paid sick leave for every 35 hours worked, up to 40 hours per year. Allows employer to limit accrual to 1 hour per week. An employer is not required to allow an eligible employee to use more than 40 hours of paid sick leave in a single benefit year or to carry over more than 40 hours of time from one benefit year to another. • Employers may provide all 40 hours at the start of a benefit year to avoid carry-over. Can pro-rate time for new employees. • The bill creates a rebuttable presumption that an employer is in compliance with the law if the employer provides the requisite hours annually. This time can include, paid vacation days, personal days and paid time off.
<p>USE AND PAYMENT OF TIME. Leave time can be used in the smallest increment that the employer’s payroll system uses to account for absences (e.g., 6-minute increments). The Act is unclear as to how time must be paid to commissioned, piece-meal and other employees with varying wages.</p>	<ul style="list-style-type: none"> • The bill specifies time may be used in 1-hour increments unless the employer has a different increment policy and that policy is in writing in an employee handbook. • The bill requires the employer to pay at a pay rate equal to the greater of either the normal hourly wage, the base wage or the applicable minimum wage rate. An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay or gratuities in the calculation.

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<p>NOTIFICATION / DOCUMENTATION. The Act requires seven days' notice for use or, if not possible, "as soon as practicable." This will provide employees 72 hours of no-notice leave time. An employer can only require documentation after three consecutive leave days. Documentation that sick time is necessary will be limited to a generic statement by a health care professional – nothing more. Employers are responsible for any payment of the employee's out-of-pocket costs associated with providing documentation.</p>	<ul style="list-style-type: none"> The bill strikes the language in the original Act and replaces it with a provision allowing the employer to require the employee to comply with the employer's usual and customary notification, procedural and documentation requirements. Employer must give the employee three days to produce any required documentation.
<p>LITIGATION, FINES AND FEES. The Act assumes the employee's side for unfavorable personnel actions, putting employers in a position of having to defend their decisions in court. The Act creates a private right of action for workers and two rebuttable presumptions against employers. Remedies available to employees include reinstatement, attorney fees and all back pay and benefits (doubled as liquidated damages).</p>	<ul style="list-style-type: none"> The bill strikes the language in the original Act and creates an administrative process for employees to lodge complaints. The Department must issue a determination upon conclusion of an investigation and inform the employer of its appeals rights. The Department may assess payment of medical leave and back-pay and will serve as the trustee. The bill ensures employees are aware of their rights and able to seek relief if they've been affected by a violation.

Data Courtesy: Michigan Chamber of Commerce