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What to Know About the Michigan Earned Sick Time Law

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At NOHRA's December Legislative Update, there was much discussion (and understandable confusion) regarding the current state of paid leave in Michigan. Unfortunately, Michigan employers have not yet received the much needed guidance on how to prepare for the February 19, 2023 deadline. By way of background, in September 2018 a ballot initiative called the Earned Sick Time Act ("ESTA") was approved by the Michigan Legislature to provide paid sick leave to Michigan employees. In December 2018, the Michigan Legislature amended the ESTA by passing the Paid Medical Leave Act ("PMLA"). The PMLA significantly changed the ESTA by reducing the amount of leave required (40 hours) and making it applicable only to employers with 50 or more employees. In July 2022, the Michigan Court of Claims held that the changes from the ESTA to the PMLA were unconstitutional. Subsequently, a stay was issued until February 19, 2023 so that the parties had time to file appeals and employers had time to prepare. Since that time, anxious employers have been awaiting further guidance on how the ESTA will work. Unfortunately, the Michigan Court of Appeals has yet to decide the case and both parties have asked the Court to issue its decision by February 1, leaving only three weeks for Michigan employers to implement the paid leave changes.

Unlike the PMLA, the ETSA requires all Michigan employers to provide all employees with paid time off. The ESTA requires Michigan employers to accrue one hour of paid time off for each 30 hours worked by the employee. Although the ESTA does not contain a cap on the number of paid sick time hours that can be accrued in a year, it does provide a cap on how many hours of paid time off may be used each year. For employers with 10 or more employees ("large employers"), the ETSA requires employers to allow employees to use 72 hours a year. For employers with fewer than 10 employees ("small employers"), the ESTA requires employers to allow employees to use 40 hours paid earned sick time in a year and an additional 32 hours unpaid time off in a year. To determine whether an employer is a large or small employer, all individuals performing work for compensation must be counted. This includes all full-time, part-time, and temporary employees. Furthermore, the ESTA does not include a "frontloading" provision. Hours are accrued as they are worked, one hour accrued for every 30 hours worked. Unused accrued time may be carried over to the next year, however, the employer does not have to permit an employee to take more earned sick time than the caps listed above.

Employees may use earned sick time for a variety of reasons including the employee's own health condition or treatment for a family member. Family member is defined very broadly to include the employee's child, spouse, parent, domestic partner, grandparent, grandchild, sibling, and "any other individual related by blood or affinity whose association with the employee is equivalent of a family relationship." Leave may also be used for absences related to being a victim of domestic violence or sexual assault, meetings at school or childcare related to the child's health or effects of domestic violence or sexual assault, and absences related to certain public health emergencies.

Employees must provide notice of the need for leave "as soon as practicable" and employers may not require employees to provide more than seven days' notice. Employers may not request documentation of absences of three consecutive days or less and if an employer requires documentation for absences of more than three days, the employer is required to pay the employee's expenses to obtain the documentation. Employees must be allowed to use earned sick time in the smallest increment that the employer's payroll system uses to account for other absences or no more than one hour increments. Employers must provide notice of employee rights under the ESTA on the employee's date of hire and display a poster explaining the ESTA in a "conspicuous place." Employees may file a private right of action against an employer within three years of the alleged violation and request reinstatement, back pay, liquidated damages, costs, and attorneys' fees.

Michigan employers should pay close attention in the next few weeks to the forthcoming Michigan Court of Appeals decision and then make sure a compliant paid time off policy is in place.

Sarah Pawlicki and Jim Yates are Members in Eastman & Smith Ltd.'s Labor and Employment group and SHRM Certified Senior Professionals in Human Resources (SHRM-SCP). They partner with human resource professionals to make workplaces better (and legally compliant). They can be reached at 419-241-6000 or sepawlicki@eastmansmith.com and jbyates@eastmansmith.com. The article in this publication has been prepared by Eastman & Smith Ltd. for informational purposes only and should not be considered legal advice. This information is not intended to create, and receipt of it does not constitute, an attorney/client relationship.

Eastman & Smith Employment Law Update

New Year. New Challenges. New Opportunities.

Hilton Garden Inn Perrysburg

February 16, 2023

Event Sponsor: Eastman & Smith

The Labor & Employment Practice Group of Eastman & Smith Ltd. invites you to attend:

Employment Law Seminar

New Year. New Challenges. New Opportunities.

Thursday, February 16, 2023

9:00 a.m. – 4:00 p.m.

A new year always presents new challenges and opportunities for employers. Understanding the trends and laws impacting businesses is key to successfully tackling these challenges and maximizing opportunities. Join us for advanced discussions of the following topics:

- Common FLSA Violations & Avoiding Wage and Hour Litigation
- Pay Equity and Transparency
- FTC Attack on Non-Competition Agreements
- New Protections for Pregnant and Nursing Employees
- Diversity and Inclusion Initiatives
- Drafting and Enforcing Comprehensive Attendance Control Policies
- Work Restrictions, Modified-Duty Assignments and ADA Accommodations
- Challenging Intermittent Leave Issues Under the FMLA

Fee = \$30 (includes continental breakfast and lunch)

Registration starts at 8:30 a.m.

Questions? Contact Andrea Kenney at 419-247-1616
or email amkenney@eastmansmith.com