Series 4000: District Employment

4100 Employee Rights and Responsibilities

*4113-F-2 Michigan Earned Sick Time Act (ESTA) Leave Request Checklist**

☐ **1.** **EE Eligibility**. Determine if EE is eligible for earned sick time under ESTA. If EE is ineligible, then ESTA does not apply. EE is ineligible if EE fits within at least 1 of the following exclusions:

- ☐ CBA Exclusion
  - ☐ EE is covered by a CBA that was in effect on 2/21/25,
  - ☐ The CBA has not expired, and
  - ☐ For *every* employee covered by the CBA, the CBA addresses sick leave (or a similar benefit) or expressly excludes sick leave.
- ☐ Individual Employment Contract Exclusion
  - ☐ EE is covered by an individual employment contract that was signed by *both* the EE and ER on or before 12/31/24,
  - ☐ Contract is effective for 3 years or less,
  - ☐ ER notifies LEO of the contract,[1] and
  - ☐ Contract "conflicts" with ESTA.[2]
- ☐ Categorical Exclusion
  - ☐ EE is an unpaid trainee or an unpaid intern,
  - ☐ EE is under 18 years old and employed under the Michigan Youth Employment Standards Act, *or*
  - ☐ ER policy allows EE to schedule EE's own working hours and prohibits ER from taking adverse personnel action against EE for not scheduling a minimum amount of working hours.

☐ **2.** **Purpose for Leave**. Confirm EE's requested leave is for an ESTA purpose. If not for an ESTA purpose, then ESTA does not apply. An eligible EE may use accrued earned sick time for any of the following purposes:

- ☐ EE or EE family member illness, injury, health condition, or preventative medical care.
- ☐ If EE or EE family member is a domestic violence or sexual assault victim, for:
  - ☐ Medical care or counseling for a physical or psychological injury or disability,
  - ☐ Services from a victim services organization,
  - ☐ Relocation,
  - ☐ Legal services, or
  - ☐ Participation in any civil or criminal proceedings related to the domestic violence or sexual assault.
- ☐ Meeting at child's school or place of care related to:
  - ☐ The child's health or disability, or
  - ☐ The effects of domestic violence or sexual assault on the child.
- ☐ Closure of EE's place of business by a public official due to a public health emergency.
- ☐ EE need to care for a child whose school or place of care is closed by order of a public official due to a public health emergency.
- ☐ Leave when health authorities or a health care provider determines that EE or EE family member presence in the community jeopardizes the health of others because of EE or EE family member exposure to a communicable disease.

☐ **3.** **Concurrent or Alternate Leave.**

- ☐ If an eligible EE's requested leave is for an ESTA reason, determine whether earned sick time will run concurrently with any other available leave, such as FMLA leave or leave granted by a CBA, individual employment contract, or policy.
- ☐ If EE is not an eligible EE or if eligible EE's requested leave is not for an ESTA reason, determine if EE qualifies for any other leave, such as leave granted by a CBA, individual employment contract, or policy.

☐ **4.** **Leave Notice.** ESTA generally permits an ER to require an EE to provide up to 7 days' advanced notice for foreseeable leave and notice as soon as practicable for unforeseeable leave. ESTA also permits an ER to discipline an EE who fails to provide required notice. Check any applicable CBA, individual employment contract, and policy for any ESTA advanced notice requirements applicable to the EE.

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* This checklist was created on 9/17/25 and is based on (i) statutory text as of that date, and (ii) 7/22/25 Frequently Asked Questions published by LEO (FAQs). The back side of this checklist contains definitions.

This checklist is intended to assist a school with determining whether an EE's leave request qualifies for earned sick time and, if so, to assist the school with processing that leave. According to the FAQs, an EE must request the use of earned sick time; an ER cannot mandate that an EE use earned sick time before the EE uses other leave.

Review any applicable CBA, individual employment contract, and policy for ESTA provisions that may impact the above checklist. For example, a contract may grant earned sick time to an EE who does not otherwise qualify for earned sick time under ESTA.

ESTA leave mandates do not apply to an ER with less than 11 EEs (Small Employer) until 10/1/25 or, if the Small Employer did not employ an EE before 2/21/22, until 3 years after the ER first employs an EE.

[1] ERs must notify LEO by email: leo-estacontract@michigan.gov.

[2] Neither ESTA nor the FAQs expressly address what it means for an individual employment contract to "conflict" with ESTA. The FAQs suggest, however, that a conflict exists if the contract addresses sick leave (or a similar benefit) or expressly excludes sick leave.

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☐ **5.** **Available Leave**. Confirm EE did not exhaust accrued earned sick time. If EE exhausted accrued time, then ESTA does not apply, assuming that ER granted minimum leave required by ESTA. An ER may satisfy its earned sick time mandate for an EE by either (i) frontloading earned sick time at the beginning of the ER's ESTA benefit year for immediate use (frontloading requirements differ for full-time and part-time EEs), or (ii) granting 1 hour of earned sick time for every 30 hours worked. Reminders:
- ☐ If EE accrues leave at the rate of 1 hour for every 30 hours worked, then:
  - ☐ An ER is not required to permit an EE to use more than 72 hours of earned sick time during an ESTA benefit year (40 hours if a Small Employer).
  - ☐ ER must allow EE to carry over up to 72 hours of accrued leave from ESTA benefit year to ESTA benefit year (40 hours if a Small Employer).
  - ☐ An ER may require an EE hired after 2/21/25 to wait up to 120 calendar days after commencing employment before using accrued leave.
  - ☐ An EE exempt under the Fair Labor Standards Act is assumed to work 40 hours per workweek, unless the EE's normal workweek is less than 40 hours.
- ☐ If EE (i) transfers to another position while employed for the same ER, or (ii) separates from employment but is rehired by the same ER within 2 months after separation, then EE may use earned sick time that was accrued but unused before the transfer or separation, unless the ER paid the EE the value of that earned sick time at time of transfer or employment separation.

☐ **6.** **Leave Increment**. Leave may be used in:
- ☐ 1-hour increments, or
- ☐ The smallest increment the ER uses to account for non-ESTA absences.

☐ **7.** **Supporting Documents**. For leave of more than 3 consecutive days, ER may require EE to provide the ER with reasonable documentation that earned sick time was used for an ESTA purpose. If ER requests such documentation, then ER is responsible for paying EE's costs in obtaining the documentation and EE must return the documentation within 15 days of the request. Reasonable documentation is:
- ☐ Documentation signed by a health care professional indicating that earned sick time is necessary, or
- ☐ In cases of domestic violence or sexual assault, any of the following selected by the EE:
  - ☐ A police report indicating that the EE or the EE's family member was a victim of domestic violence or sexual assault,
  - ☐ A signed statement from a victim and witness advocate affirming that the EE or the EE's family member is receiving services from a victim services organization, or
  - ☐ A court document indicating that the EE or the EE's family member is involved in legal action related to domestic violence or sexual assault.

Definitions

- CBA – collective bargaining agreement.
- Domestic partner – adult in committed relationship with another adult.
- Earned sick time – Time off from work that can be used for any ESTA purpose.
- EE – Employee.
- ER – Employer.
- Family member –
  - Biological, adopted, or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the EE stands *in loco parentis*,
  - Biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an EE or an EE's spouse or domestic partner or a person who stood *in loco parentis* when the EE was a minor child,
  - Individual to whom the EE is legally married under the law of any State or a domestic partner,
  - Grandparent or grandchild,
  - Biological, foster, or adopted sibling,
  - Individual related by blood to the EE, or
  - Individual whose close association with the EE is the equivalent of a family relationship.
- FMLA – Family and Medical Leave Act.
- Health Care Professional –
  - Person licensed under Michigan or federal law to provide health care services, including nurses, doctors, and emergency room personnel, or
  - Certified midwife.
- LEO – Michigan Department of Labor and Economic Opportunity.

This checklist provides a general overview of ESTA and its applicability to schools. None of the information in this checklist is intended as legal advice or opinion for specific facts, matters, situations, or issues. Consult legal counsel about the application of this document to a specific circumstance or situation. This checklist is subject to future legal developments.

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