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Paid Medical Leave Act

On September 5, 2018 the Michigan Legislature adopted the Earned Time Sick Act into law, previously a proposed ballot effort.

This was done to allow the legislate time to amend the law. These amendments occurred during “Lame Duck” and resulted in the Paid Medical Leave Act.

The Amended Statute significantly changed the original form of the proposed measure.

Paid Medical Leave Act Overview

The Act is Effective March 29, 2019

Employers who employ more than fifty (50) individuals are subject to the statutes regulations, with exception.

Paid sick leave must be provided to “eligible Employee(s)”, an individual engaged in service to an employer in the business of the employer and from whim an employer is required to withhold federal income tax, with **exception**.

Paid Medical Leave Act Exceptions

(1) employees exempt from statutory overtime under the Fair Labor Standards Act (FLSA) because they are employed in a bona fide executive, administrative, or professional capacity, or in the capacity of an outside salesman as defined by the FLSA

(2) part-time workers (those "who worked, on average, fewer than 25 hours a week during the immediately preceding calendar year"

(3) seasonal workers (those employed for "25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer").

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(4) Variable Hour Employee: as defined by 26 CFR 54.498OH-1

(5) Temporary Workers

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Variable Hour Employee

The term variable hour employee means an employee if, based on the facts and circumstances at the employee's start date, the applicable large employer member cannot determine whether the employee is reasonably expected to be employed on average at least 30 hours of service per week during the initial measurement period because the employee's hours are variable or otherwise uncertain.

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Variable Hour Employee

Factors to consider in determining whether it can be determined that the employee is reasonably expected to be (or reasonably expected not to be) employed on average at least 30 hours of service per week during the initial measurement period include, but are not limited to, whether the employee is replacing an employee who was a full-time employee or a variable hour employee, the extent to which the hours of service of employees in the same or comparable positions have actually varied above and below an average of 30 hours of service per week during recent measurement periods, and whether the job was advertised, or otherwise communicated to the new employee or othered (for example, through a contract or job description) as requiring hours of service that would average at least 30 hours of service per week, less than 30 hours of service per week, or may vary above and below an average of 30 hours of service per week. wise document

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These factors are only relevant for a particular new employee if the employer has no reason to anticipate that the facts and circumstances related to that new employee will be different. In all cases, no single factor is determinative. For purposes of determining whether an employee is a variable hour employee, the applicable large employer member may not take into account the likelihood that the employee may terminate employment with the applicable large employer (including any member of the applicable large employer) before the end of the initial measurement period.

Paid Medical Leave Act Compliance

Option 1. Employees will accrue paid medical leave at a rate of one hour for every 35 hours actually worked. However, employees cannot accrue more than one hour in a calendar week or more than 40 hours per benefit year.

Hours worked does not include hours taken off work by an eligible employee for paid leave, including paid vacation days, paid personal days, and paid time off, unless the employer voluntarily chooses to include nonworking time in the accrual.

Employees can carry over up to 40 hours of unused accrued paid medical leave from one benefit year to another benefit year, but employees may not use more than 40 hours in a single benefit year.

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Option 2. An employer may provide at least 40 hours of paid medical leave at the beginning of the benefit year or on the date the individual becomes eligible during the benefit year on a prorated basis. If an employer adopts this approach, it does not have to permit employees to carry over unused leave to the next benefit year.

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There is a rebuttable presumption that an employer is in compliance with the Paid Medical Leave Act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year, including paid vacation days, paid personal days, and other paid time off. What type of information would rebut this presumption is yet to be determined.

An employee may use accrued paid medical leave as it is accrued, except that an employer may require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave."

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Employees must follow the employer's usual and customary notice, procedural, and documentation requirements for requesting leave, but the employee must be afforded at least three days to provide documentation.

Employees may be denied leave and may be subject to discipline and discharge for failing to follow notice, procedural, and documentation requirements. However, employees may have protections under other laws like the Americans with Disabilities Act and the Family and Medical Leave Act that employers cannot ignore.

Kendzierski v. Macomb County

The plaintiffs represent a large class of Macomb County retirees who were covered under many different CBAs that contained similar language regarding the healthcare benefits they would receive in retirement. They maintain that those CBAs gave them a vested right to lifetime healthcare benefits (although there were no explicit promises the benefits would last “for life” or “until death”).

This is the first case to address the issue of Retiree Health Care at the Michigan Supreme Court.

Janus v AFSCME Council 31

The Supreme Court held that the collection of agency fees from nonconsenting public-sector employees violated those employees' First Amendment rights.

Involuntary deductions compelled them to subsidize private speech—i.e., bargaining positions and related activities—on matters of substantial public concern, and that was as much of a First Amendment violation as preventing the employees from speaking out themselves.

Shelby Township v Command Officers of Michigan

An employer's choice under PA 152 between the 80/20, hard cap, or opt-out options is not a mandatory subject of bargaining, once that choice is made, the public employer has a duty to bargain about the calculation of the Union members' premium shares, and how the total employee contributions are to be allocated between bargaining units.

Shelby Township v Command Officers of Michigan

The decision affirms an employer is prohibited from using blended insurance rates that include both active and retiree health insurance costs when calculating employer and employee contributions toward the cost of health insurance under PA 152.