

**Fahey Schultz  
Burzych Rhodes**

EXPERT COUNSEL



REAL SOLUTIONS

---

# THE (NEW & IMPROVED?) ESTA FIESTA

---

ATTORNEYS HELEN “LIZZIE” MILLS & CHAD KARSTEN

FAHEY SCHULTZ BURZYCH RHODES PLC

FEBRUARY 24, 2025

---



# DISCLAIMER

---

- Today's discussion and the materials associated with it are comprised of general information. They are not intended as legal advice related to a particular situation.





# AGENDA

---

- ESTA at a Glance
- Eligible Employees (*who they are & how they get sick time*)
- Employer Obligations
- Notice Requirements (*yours and theirs*)
- What Sick Time May Be Used For
- Potential Problem Areas & Saving Graces
- Action Items
- Q&A

# AT A GLANCE

- All employers must comply
- Most employees are entitled to paid sick time
  - *40 hours if 10 or fewer e'ees*
  - *72 hours if 10+ e'ees,*
- Frontload & Accrual Options
- Limited employer right, and a new cost, to documentation

# WHEN DOES THIS EFFECT YOU?

---



- Large Employers (more than 10 employees) must, ostensibly, comply **now**... *except* there is a 30 day grace to get notice up.
- Small Employers (10 or fewer employees) delayed until October 1, 2025

# WHO IS CONSIDERED AN ELIGIBLE EMPLOYEE?

---

## EVERYONE EXCEPT:

- Unpaid Interns / Trainees (Please be careful!)
- Minors Working Under Work Permits
- Those Who Are Covered by a Written Policy Who Can:
  - Set Their Schedule AND
  - Cannot Be Disciplined For Failure To Work Minimum Hours

# SPECIAL CASES

---

- Independent Contractors
- Appointed Public Board And Commission Members
- Most Elected Officials\*\*\*
- A Note About Seasonals & Variable Hour Employees...



# EMPLOYER'S CHOICE: FRONTLOAD OR PERMIT ACCRUAL

---

## ACCRUAL METHOD

- Employees earn 1 hour of paid sick time for every 30 hours *worked*
- At year end, employees **must** be allowed to carryover up to **at least** the max allowed accrual (40/72)
  - Employer option to pay out or require forfeiture over that
  - Policy detail is important there!*

## FRONTLOADING

- Grant all hours (40/72) at beginning of the year
- Prorate for part-time employees
- Employer option to permit carryover
- Employer option to payout for any unused time at end of year

No matter what, no requirement payout unused time on separation of employment



# MINIMUM EMPLOYER OBLIGATIONS

- **May** cap amount of hours used (# hours depends on size of employer)
- **Must** pay sick time used at normal hourly wage (or min. wage if tipped)
- **May** count other paid leave (sick, vacation, personal, general PTO) toward these minimums so long as the banks used for ESTA comply with the ESTA
- **Must not** require employee to find replacement to cover their sick time
- **Must not** count ESTA time used as an absence in a points or other absence system





GENERAL REQUIREMENTS – EARNED SICK TIME ACT\*

Your employer's 'year' for the purposes of the Earned Sick Time Act is: \_\_\_\_\_

Earned Sick Time Accrual

Number of Employees	Minimum Accrual Rate	Employer May Limit Use To:
10 or fewer employees	1 hour for every 30 hours	40 hours in a year
11 or more employees	1 hour for every 30 hours	72 hours in a year

- Determined by Employer written policy earned sick time may be carried over from year to year or paid out. A business with 10 or fewer employees is not required to permit an employee to use more than 40 hours of paid earned sick time in a single year, employers with 11 or more employees are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.
- Earned sick time shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later.
- An employee may use accrued earned sick time as it is accrued. Newly hired employees may be subject to a 120 day wait period for use.
- An employer is in compliance with the act if it provides any paid leave in at least the same amounts as that provided under this act that may be used for the same purposes and under the same conditions provided in this act and that is accrued at a rate equal to or greater than the rate described in subsections (1) and (2) of Section 3 of the act. Paid leave includes, but is not limited to, paid vacation days, personal days, and paid time off.

Earned Sick Time Uses

An employer shall permit an employee to use the earned sick time accrued for any of the following:

- The employee's or the employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee's mental or physical illness, injury, or health condition; or preventative medical care for the employee.
- If the employee or the employee's family member is a victim of domestic violence or sexual assault, for medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.
- For meetings at a 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; or
- For closure of the employee's place of business by order of a public official due to a public health emergency; for an employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or when it has been determined by the health authorities having jurisdiction or by a health care provider that the employee's or employee's family member's presence in the community would jeopardize the health of others because of the employee's or family member's exposure to a communicable disease.
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Exercise of Rights

- An employer or any other person shall not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under this act.
- An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. "Retaliatory personnel action" means any of the following:
  - Denial of any right guaranteed under this act.
  - A threat, discharge, suspension, demotion, reduction of hours, or other adverse action against an employee or former employee for exercise of a right guaranteed under this act.
  - Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.
  - Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.
- An employer's absence control policy must not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

Complaint Filing

An employee affected by an alleged violation, at any time within 3 years after the alleged violation or the date when the employee knew of the alleged violation, whichever is later, may do any of the following:

- Bring a civil action for appropriate relief, including, but not limited to, payment for used earned sick time; rehiring or reinstatement to the employee's previous job; payment of back wages; reestablishment of employee benefits to which the employee otherwise would have been eligible if the employee had not been subjected to retaliatory personnel action or discrimination; and an equal additional amount as liquidated damages together with costs and reasonable attorney fees as the court allows.
- File a claim with the department, which shall investigate the claim. Filing a claim with the department is neither a prerequisite nor a bar to bringing a civil action.

\*For precise language of the statute, see Public Act 338 of 2018, as amended

# WRITTEN NOTICE TO EMPLOYEES

- How much sick time employees may receive
- How you intend to calculate a "year"
- Appropriate reasons for employee to use paid sick time
- Protections for retaliation
- Info about filing complaint with the State



# EMPLOYEE NOTICE – FORESEEABLE

- **May** require advanced notice of the need for foreseeable paid sick time (*e.g., for a pre-scheduled doctor's appointment*).
  - But not more than **7 days in advance**





# EMPLOYEE NOTICE – UNFORESEEABLE

- **Notice as soon as practicable or**
- **Sooner if there is an employer (written) policy:**
  1. includes call-in rules **and**
  2. is given to employees **and**
  3. does not require notice before the employee would know of the need for sick time





# DOCUMENTATION

---

- **Must not** request documentation **unless** the sick time is for **more than** three (3) *consecutive* days of work.
- **Must** be returned within 15 days
- **Must not** deny the use of paid sick time pending proper documentation.
- **Must pay** cost incurred by employee to obtain the documentation.
- **Special Note:** Sufficiency of documentation is not high bar.



# PERMITTED USES OF PAID SICK TIME

- Personal or family member mental or physical illness, injury, or health condition. (Incl. time off for the illness/injury as well as time for diagnosis, treatment, or preventative care).
- Time off for medical or psychological care, to obtain victim services, to relocate, to obtain legal services, or to participate in legal proceedings *if* the employee or a family member is the victim of sexual assault or domestic violence.



# PERMITTED USES OF PAID SICK TIME

School meetings needed as the result of the employee's child's disability or effects of domestic violence or sexual assault.

Closure of the employee's place of business or their child's school or place of care, due to a public health emergency.







# DEFINING FAMILY MEMBERS (PART I)

---

- Children
  - Parents
  - Spouses
  - Non-married domestic partners
  - Grandparents
  - Grandchildren
  - Siblings
- All relationships include biological, adopted, foster, and step-, relationships.*

# DEFINING FAMILY MEMBERS (PART 2)

Any other non-related person “whose close association with the employee is the equivalent of a family relationship.”





# POTENTIAL PROBLEM AREA: DOCUMENTATION

---

- Gamesmanship
- Expense
- Sufficient document is a barebones requirement
- Interplay with FMLA
- Non-ESTA purposes for requiring documentation

# POTENTIAL PROBLEM AREA: NO CALL, NO SHOW

---

- *Tread Carefully*
  - Certain situations where notice might lawfully be days late.
  - However, amendments make path to discipline more clear



# EMPLOYEE CLAIMS

- 3 years to make complaints to State (and only the State)
  - So hold records at least that long!
- State can investigate & sue on employee's behalf
- Fines:
  - Up to \$1,000 per retaliation violation
  - Up to 8x employee's wage for failing to provide time
  - Up to \$100 for each failure to provide/post notice



# UNION CONTRACTS & EMPLOYMENT AGREEMENTS

---

- Does not apply to union contracts in effect as of Feb. 21, 2025, until expiration
- Does not apply to employment agreements signed before Dec. 31, 2024 until expiration if:
  - Agreement term is less than 3 years
  - Contract conflicts with ESTA
  - State is informed about the Agreement



1. If you think your entity is not obligated to provide leave time, or you have employees who might not be entitled to leave, ***talk with expert employment law counsel ASAP***

***Pro Tip:*** Wanting an exemption to exist does not make it so! Neither does being mad or frustrated about the responsibility.

**ACTION ITEMS (PART I)**

# ACTION ITEMS (PART 2)

---

2. Assess how paid sick (or PTO) leave policies or contract terms compare to the new and improved ESTA
3. Determine to modify those leave policies/terms or add new
4. Determine frontload or accrual method
5. Develop tracking methods for accrual/use
6. Post the State's notice on or before March 23 and for new hires
7. Draft, implement, and train on the policy expectations (managers and all employees separately)



# SAVING GRACES?

---

- Small Employers Get a Delayed Implementation
- No more rebuttable presumption and private cause of action
- Must only permit use of ESTA time that is actually available
- Still acceptable to issue discipline or take other corrective action if employee did not use the time for a purpose protected by law.



THERE CAN'T POSSIBLY BE  
QUESTIONS

# QUESTIONS

---



Helen “Lizzie” Mills & Chad Karsten  
Fahey Schultz Burzych Rhodes PLC

Tel: 517-381-0100

[www.fsbrlaw.com](http://www.fsbrlaw.com)

[hmills@fsbrlaw.com](mailto:hmills@fsbrlaw.com)

[ckarsten@fsbrlaw.com](mailto:ckarsten@fsbrlaw.com)

*This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to a particular situation. Please contact an attorney if you need assistance related to a specific legal issue.*

