

Michigan's New Paid Medical Leave Act

The Paid Medical Leave Act, [PA 369](#) of 2018, is available at <https://www.legislature.mi.gov/> and employers should take time to read the entire Act. Employers will be subject to the Act's requirements beginning on March 29th, 2019.

Employer Coverage

The primary determination of an employer's coverage resides in the "employer" definition. For purposes of this Act: **“Employer” means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. Employer does not include the United States government, another state, or a political subdivision of another state.**”

The number of employees will be the first step to determine coverage. There will likely be guidance on the method to determine that number, however, the Act does not specify regulation development.

“Employee” is not specifically defined, however, “eligible employee” is defined and may play a role in the employee count method. The person is an employee regardless of full or part-time status or how many hours they work.

“Eligible Employee” Coverage

For an employee to be covered they must work for a covered “employer” and be an “eligible employee.”

“Eligible employee” means an individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes.”

While most employment relationships require federal income tax withholding there are some that do not require withholding. For example, IRS does not require employers to withhold federal income taxes from H-2A visa workers though visa workers may request withholding be made as they are subject to federal income tax.

“Eligible employee” does not include any of the following:

- i. “An individual who is exempt from overtime requirements under section 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1).” *This is the executive, administrative, or professional employee overtime exception.*
- ii. “An individual who is not employed by a public agency, as that term is defined in section 3 of the fair labor standards act, 29 USC 203, and who is covered by a collective bargaining agreement that is in effect.”
- iii. “An individual employed by the United States government, another state, or a political subdivision of another state.”
- iv. “An individual employed by an air carrier as a flight deck or cabin crew member that is subject to title II of the railway labor act, 45 USC 151 to 188.”
- v. “An employee as described in section 201 of the railway labor act, 45 USC 181.”
- vi. “An employee as defined in section 1 of the railroad unemployment insurance act, 45 USC 351.”
- vii. “An individual whose primary work location is not in this state.” *While this provision may impact certain agricultural workers the “25 week” or “25 hour-average” provisions (listed in (x) and (xii) below may apply.*

- viii. “An individual whose minimum hourly wage rate is determined under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b.” *This group will include those employees under 20 years of age that qualify and are paid a “training wage” or persons under the age of 18 at an 85% rate.*
- ix. “An individual described in section 29(1)(l) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.” *This provision is a bit more complicated and reads as follows: MCL 421.29(1)(l) Was employed by a temporary help firm, which as used in this section means an employer whose primary business is to provide a client with the temporary services of 1 or more individuals under contract with the employer, to perform services for a client of that firm if each of the following conditions is met:*
 - (i) *The temporary help firm provided the employee with a written notice before the employee began performing services for the client stating in substance both of the following:*
 - (A) *That within 7 days after completing services for a client of the temporary help firm, the employee is under a duty to notify the temporary help firm of the completion of those services.*
 - (B) *That a failure to provide the temporary help firm with notice of the employee's completion of services pursuant to sub-subparagraph (A) constitutes a voluntary quit that will affect the employee's eligibility for unemployment compensation should the employee seek unemployment compensation following completion of those services.*
 - (ii) *The employee did not provide the temporary help firm with notice that the employee had completed his or her services for the client within 7 days after completion of his or her services for the client.*
- x. “An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.” *This provision covers many seasonal positions in a variety of industries including agriculture. At first read the provision looks to weeks worked/scheduled without regard to total hours worked.*
- xi. “A variable hour employee as defined in 26 CFR 54.4980H-1.” *This is a term used to define an employee of an “applicable large employer,” under the Affordable Care Act, whose circumstances 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.*
- xii. “An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year.” *This provision is separate from the “25 week” provision in item (x) above. The 25 hours per week is an annualized weekly average. This provision may apply to seasonal industry workers that have very long hour weeks and periods of limited or no hours of work in a week but have hours worked in more than 25 weeks.*

Establishing Coverage

Employers should review the above definitions to determine coverage for the operation then for each individual employee.

What are the benefits?

The Act allows for the accrual of “paid medical leave” time.

Accrual of “paid medical leave” shall occur at a rate of at least 1 hour of “paid medical leave” for every 35 hours worked. An employer is not required to allow an eligible employee to accrue more than 1 hour of

“paid medical leave” in a calendar week. An employer may limit an eligible employee’s accrual of “paid medical leave” to not less than 40 hours per benefit year. Note this provision is based on a “calendar week” rather than on commonly used “pay periods” as allowed under other wage and hour laws.

How will “paid medical leave” time be determined?

There are three structures (note the titles used are not in the Act) for employers to consider:

Accrued Time

- Use Time as Accrued – Subject to the potential probation period (bullet below) the employee may use “paid medical leave” as it is accrued. For example, an “eligible employee” works 40 hours in one week. After worked hour 35 the employee could request 1 hour of “paid medical leave.”
- Probation Period – An employer may require an employee to wait until the 90th calendar day after commencing employment before using accrued “paid medical leave.”
- Benefit Year – As the accrual occurs from the “commencement of the employee’s employment” employers will likely need separate benefit years for most new employees. For existing employees, the “benefit year” will likely correspond to the effective date of the legislation – March 29, 2018.
- Carry Over – Under this structure the “eligible employee” will be able to carry-over up to 40 hours of unused accrued “paid medical leave” to the next benefit year.

Defined Time

- Benefit Year “Paid Medical Leave” – An employer may provide at least 40 hours of “paid medical leave” to an “eligible employee” at the beginning of a benefit year. Under this option the employer may prorate available “paid medical leave” for newly hired “eligible employees” corresponding to the balance of an established benefit year. The probation period option, allowed under the Accrued Time option would not be available under this option. The employer is not required to establish a carry-over procedure for this structure.

“Paid Leave”

- An employer that grants at least 40 hours of “paid leave” to an “eligible employee” each benefit year will have a rebuttable presumption the employer is in compliance with the Act’s requirements.
- “Paid leave” includes, but is not limited to, paid vacation days, paid personal days, and paid time off.

Will unused time automatically paid, retained or carried over?

- Employee Transfer – If the “eligible employee” is transferred but remains an employee of the employer all accrued or established “paid medical leave” is retained.
- Employee Separation - If an eligible employee separates from employment and is rehired by the same employer, the employer is not required to allow the eligible employee to retain any unused “paid medical leave” that the “eligible employee” previously accumulated while working for the employer.
- Payment for Unused Time – Employers are not required to provide financial or other reimbursement to an “eligible employee” for accrued “paid medical leave” that was not used before the end of a benefit year or before the eligible employee’s termination, resignation, retirement, or other separation from employment.

What is the pay rate?

The pay rate shall be equal to the greater of either the normal hourly wage or base wage for that “eligible employee” or the state minimum wage rate.

When can “paid medical leave” be used?

While the Act allows for a wide range of circumstances to be considered not all reasons for time off would be considered under the first two coverage options described above. An employer shall allow an “eligible employee” to use “paid medical leave” accrued for any of the following:

- a) The eligible employee’s mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee’s mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.
- b) The eligible employee’s family member’s mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee’s family member’s mental or physical illness, injury, or health condition; or preventative medical care for a family member of the eligible employee.
- c) If the eligible employee or the eligible employee’s family member is a victim of domestic violence or sexual assault, the 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.
- d) For closure of the eligible employee’s primary workplace by order of a public official due to a public health emergency; for an eligible 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 if it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee’s or eligible employee’s family member’s presence in the community would jeopardize the health of others because of the eligible employee’s or family member’s exposure to a communicable disease, whether or not the eligible employee or family member has actually contracted the communicable disease.

Note, if the employer has chosen to provide “paid leave” the “eligible employee” may request time off for additional reasons as determined by the employer’s “paid leave” practice.

Who is considered a family member?

Family member includes:

- Biological, adopted or foster child, stepchild or legal ward, or a child to whom the employee stands in loco parentis
- Biological parent, foster parent, stepparent, adoptive parent, or legal guardian of an employee
- Spouse or individual to whom the employee is legally married under the laws of any state
- Person who stood in loco parentis when the employee was a minor child
- Grandparent
- Grandchild
- Biological, foster, and adopted siblings

How will an “eligible employee” request “paid medical leave”?

An “eligible employee” shall, when requesting to use “paid medical leave”, comply with his or her employer’s usual and customary notice, procedural, and documentation requirements for requesting leave. An employer shall give an eligible employee at least 3 days to provide the employer with documentation.

An employer may not require the details of an eligible employee's or an eligible employee's family member's medical condition as a condition of providing "paid medical leave" under this Act.

Must an "eligible employee" provide documentation of medical issue for each request?

While documentation is not specifically required the Act does not require an employer to provide paid medical leave for any purposes other than as described.

An employer may require an "eligible employee" who is using "paid medical leave" because of domestic violence or sexual assault to provide documentation that the "paid medical leave" has been used for that purpose. The following types of documentation are satisfactory for purposes of this subsection:

- a) A police report indicating that the eligible employee or the eligible employee's family member was a victim of domestic violence or sexual assault.
- b) A signed statement from a victim and witness advocate affirming that the eligible employee or eligible employee's family member is receiving services from a victim services organization.
- c) A court document indicating that the eligible employee or eligible employee's family member is involved in legal action related to domestic violence or sexual assault.

The employer may not require specific details and this information shall be confidential and limits are placed on information disclosure.

How long a period can an "eligible employee" request "paid medical leave"?

The request must be used in 1-hour increments unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document. The "eligible employee" may request time up to the accrued amount of time or the available "paid leave."

Are there other requirements?

Records – An employer shall retain for not less than 1 year, records documenting the hours worked and "paid medical leave" taken by "eligible employees."

Posting – Employers will be required to display a poster including:

- a) The amount of paid medical leave required to be provided to an eligible employee under this act.
- b) The terms under which paid medical leave may be used.
- c) The eligible employee's right to file a complaint with the department for any violation of this act.

The poster has been included in ALSS Newsletter and in on new posting sets.

Are there penalties?

Employers may be required to pay for any improperly withheld "paid medical leave" and may be administratively penalized up to \$1,000. Failure to meet the posting requirement has an administrative penalty up to \$100. Complaints are to be filed within 6 months.

This act does not prohibit an employer from disciplining or discharging an "eligible employee" for failing to comply with the employer's usual and customary notice, procedural, and documentation requirements for requesting leave.