How to Not Get Sued Under Michigan’s New Paid Sick Leave Law

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BASIC DETAILS

• **Effective Date:** late March 2019

• **Yearly Use Amount:** 40 hours of paid medical leave ("PML")

• **Yearly Carry-Over Cap:** 40 hours of PML

• **Yearly Accrual Cap:** 40 hours of PML

• **Accrual Rate:** 1 hour of PML for every 35 hours worked

• **Weekly Accrual Cap:** 1 hour of PML per calendar week
  - 40 hour PML Frontload Alternative

• **“Benefit Year:”** Up to employer

• **Leave Increment:** 1-hour increments required unless the employer has a different written increment policy
COVERED REASONS

• eligible employee or family member:
  – mental or physical illness, injury, or health condition (including diagnosis, care, or treatment)
  – preventative medical care
  – domestic violence victim
  – sexual assault victim

• public official closes the eligible employee’s primary workplace due to a public health emergency

• “eligible employee’s need to care for a child whose daycare/school has been closed by order of a public official due to a public health emergency”
WHAT EMPLOYERS ARE COVERED

• **Covered:** 50 or more employees

• **Not Covered:**
  
  – US Govt.
  
  – other states or political subdivisions in other states

• Required to display a LARA-created poster (not yet available)
  
  – willful violation = $100 fine

• **Record Retention:** 1 year of records documenting the hours worked and PML taken by eligible employees
ELIGIBLE EMPLOYEES

- **Covered:** traditional W-2 employee
- **Not Covered:**
  - FLSA exempt employees
  - part-time employee (worked 25 hours on average prior calendar year).
  - seasonal employees (employed by an employer for 25 weeks or less in a calendar year for a job scheduled for 25 weeks or fewer)
  - temporary workers
  - variable hour employees
  - private sector employees covered by a collective bargaining agreement
  - federal employees
  - minors
  - railroad, flight deck, and cabin crew workers
  - employees with a primary work location outside of Michigan
ACCRUAL, WAITING PERIOD, PAY RATE

- **Accrual Start**: late March 2019 (current employees) and then immediately upon hire thereafter for new hires

- **Permissible Waiting Period on Use**: 90 calendar days post-hire

- **PML Pay Rate**: normal hourly wage or base wage
  - *Rate Not Required to Include*: overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities

- **Cash-Out Optional**

- **Not Required to Reinstate Accrued PML to Rehired Employees**
NOTICE, PROCEDURE AND DOCUMENTATION:

• “employer’s usual and customary notice, procedural, and documentation requirements for requesting leave”

• 3-Day Documentation Allowance

• *Domestic Violence/Sexual Assault Documentation/Inquiry:*
  – Cannot require documentation explain the details of the violence
  – Cannot require disclosure of details relating to domestic violence or sexual assault
  – Documentation must be kept confidential
ENFORCEMENT & COMPLIANCE

• LARA Sole Enforcer (i.e., no private lawsuits!)
  – determination issued after investigation, which details employer appeal rights

• Statute of Limitations: 6 months per violation

• Rebuttable Presumption of Compliance: Provide 40 hours/yr. of “paid leave” to eligible employees

• Remedy: PML withheld and up to $1,000 administrative fine
TAKEAWAYS

• Many employers already have compliant paid leave policies

• Frontloading = less administrative hassles

• Accrual = helps prevent January vacationers who resign upon return

• Rebuttable presumption shifts burden to LARA
QUESTIONS?

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THANK YOU

Legal Disclaimer: This document is not intended to give legal advice. It is comprised of general information. Employers facing specific issues should seek the assistance of an attorney.