

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.

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