EMPLOYEE BENEFIT UPDATE

September 18, 2018

MICHIGAN EARNED SICK TIME ACT & IMPROVED WORKFORCE OPPORTUNITY WAGE ACT

On September 5, 2018, the Michigan legislature passed two laws – the Earned Sick Time Act (ESTA) and the Improved Workforce Opportunity Wage Act (IWOWA). The ESTA requires employers to provide their employees paid leave that can be used for sick and safe time purposes. The IWOWA increases the minimum wages for Michigan employees.

Earned Sick Time Act (ESTA)

What is the law?

- A mandatory paid sick leave law; Michigan becomes the 11th state to enact this type of law
- Employees can use the leave for themselves or family members for these purposes:
  - Mental or physical illness, injury, or health condition
  - Medical diagnosis, care, or treatment thereof; or
  - Preventative medical care
  - “Safe time”, i.e., for victims of domestic violence or sexual assault, including medical care or psychological or other counseling, obtaining services from a victim services organization, relocation, obtaining legal services and participating in any civil or criminal proceedings
  - Caring for a child if the employer’s workplace or child’s school or day care facility is closed due to a public health emergency
- Employees accrue one hour of earned sick time for every 30 hours worked
- Earned sick time carries over from year to year; the law currently does not limit the number of hours that can be carried over
- Penalties for noncompliance – failure to provide sick time – civil fine of not more than $1,000. Willful violation of the laws notice or posting requirements – civil fine of not more than $100 for each separate violation

When is the law effective?

- Given the date of passage, effective date estimated to be April 1, 2019

Which employers are affected by this law?

- All private employers employing one or more individuals
**Definitions**

Small Employer – maintained less than 10 employees on their payroll during at least 20 calendar workweeks in either the current or the preceding calendar year. Includes full-time, part-time or temporary employees.

Family Members – includes an employee’s child, parent, spouse, domestic partner, grandparent, grandchild and sibling, and “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship”.

**Rules to know**

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<thead>
<tr>
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<th>Small Employers</th>
<th>All Other Employers</th>
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<tbody>
<tr>
<td>Maximum number of leave hours per year employees can accrue and use</td>
<td>40 hours paid and 32 hours unpaid</td>
<td>72 hours paid</td>
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<tr>
<td>Order of use of leave time</td>
<td>Employees must be entitled to use paid leave before using unpaid leave</td>
<td>N/A</td>
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- An employer’s existing policies for paid leave, (e.g. vacation, sick time, PTO) comply with ESTA if those policies:
  - Accrue time at a rate equal to or greater than ESTA requirements
  - Provides the same dollar amount as ESTA
  - May be used for the same purposes and under the same conditions
- Employer’s policies can include a 90-calendar day waiting period before a newly hired employee can use any accrued leave
- Employers can require employees to provide reasonable documentation that a leave for more than three consecutive days was used for a covered purpose (e.g., physician statement for an illness, police report for safe-time purposes). Employers are responsible for paying all out-of-pocket expenses the employees incurs for obtaining this documentation.

**Employer Administrative Requirements**

- Employers must provide each employee written notice and display a poster that includes:
  - Amount of leave required to be provided under ESTA;
  - Employer’s choice of it is calculating a "year;"
  - Terms under which leave may be used;
  - Statement that retaliatory personnel action against an employee for requesting or using leave is prohibited; and
  - Employee's right to bring a civil action or file a complaint with the Department of Licensing & Regulatory Affairs for any violation
- Notice must be and poster should in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce
• Breaks in service – an employee whose employment ceases with an employer and is rehired by the same employer within 6 months must be provided access to previously accrued but unused leave
• Mergers and acquisitions – a successor employer must provide any leave accrued by employees of the original employer

**Improved Workforce Opportunity Wage Act (IWOWA)**

**What is the law?**

• Minimum hourly wage rate will increase annually
• Scheduled increases:
  o Current hourly rate – $9.25 to $10.00 upon the effective date of the law (presumed to be April 1, 2019 given the date the legislature passed the law)
  o January 1, 2020 – $10.65
  o January 1, 2021 – $11.35
  o January 1, 2022 – $12.00
  o Michigan State Treasurer will calculate an inflation-adjusted minimum wage rate each October beginning in 2022 to be effective the following January 1
• Service employees who receive tips – minimum hourly wage will increase each year from the effective date of the law until it matches the Michigan minimum wage as of January 1, 2024

**Next Steps**

Consensus among legal experts is that the Michigan legislature will make some amendments to the ESTA before the anticipated effective date of April 1, 2019. Oswald Companies will continue to monitor Michigan legislative activity and keep you apprised of any changes.

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