

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:

(a) 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.

(b) 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.

Visit www.michigan.gov/wageclaim to file a claim with the Wage and Hour Division.

If a violation is found and the claim cannot be informally resolved, the Wage and Hour Division will issue a written determination that the employee or employer may appeal. If appealed, a hearing before an administrative law judge (ALJ) will be scheduled. The employer and employee are expected to attend the administrative hearing to provide evidence and give testimony regarding the claim. The ALJ may affirm, modify or reverse the department's determination.

Employee

An employee is an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.

Employer

Employer means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs one or more individuals, except that employer does not include the United States government.

Contact Information

This brochure is intended for general information only. It does not include all of the provisions of Public Act 338 of 2018, as amended.

For information on the laws administered by the Wage and Hour Division contact:

Department of Labor & Economic Opportunity

Wage and Hour Division

Stevens T. Mason Building
530 W. Allegan St. Lansing, MI 48933
517-284-7800

Southeast Michigan

3026 W. Grand Blvd., Suite 9-450
Detroit, MI 48202

Mailing Address:

PO Box 30476
Lansing, MI 48909-7976

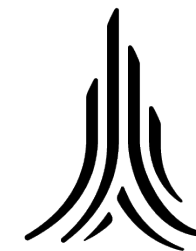
Overnight Mailing Address:

2407 N. Grand River
Lansing, MI 48906

Toll Free: 1-855-4MI-WAGE
(1-855-464-9243)

Website: www.michigan.gov/wagehour

An Overview of the Earned Sick Time Act Public Act 338 of 2018 (ESTA)



MICHIGAN DEPARTMENT OF
**LABOR & ECONOMIC
OPPORTUNITY**

Department of Labor & Economic
Opportunity

Wage and Hour Division

1-855-4MI-WAGE (1-855-464-9243)

www.michigan.gov/wagehour

Earned Sick Time Accrual Amount

Earned Sick Time accrual:

- Employees shall accrue a minimum of 1 hour of earned sick time for every 30 hours worked.
- An employer with less than 10 employees; an employee shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit.
- An employer with 10 or more employees; an employee shall not be entitled to use more than 72 hours paid earned sick time per year unless the employer selects a higher limit.
- Earned sick time shall carry over from year to year, but an employer with less than 10 employees is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and employers with 10 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.
- An employer is in compliance with this act if the employer 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 this act. Paid leave includes but is not limited to paid vacation days, personal days, and paid time off.

Earned Sick Time Hours

- Earned sick time 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.
- This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.
- An employer shall pay each employee using paid medical leave at a pay rate equal to the greater of either the normal hourly or base wage for that employee or the minimum wage established under the Improved Workforce Opportunity Wage Act, 2018 PA 337, as amended.
- An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

Earned Sick Time May Be Used For

- 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 eligible employee's mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.
- 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.
- 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.

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 shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

***** Act 338 of 2018 THIS NEW ACT IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

EARNED SICK TIME ACT
Act 338 of 2018

An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions.

History: 2018, Act 338, Eff. (sine die).

The People of the State of Michigan enact:

***** 408.961.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.961.new Short title.

Sec. 1. This act shall be known and may be cited as the "earned sick time act".

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.962.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.962.new Definitions.

Sec. 2. As used in this act:

- (a) "Department" means the department of licensing and regulatory affairs.
- (b) "Director" means the director of the department of licensing and regulatory affairs or his or her designee.
- (c) "Domestic partner" means an adult in a committed relationship with another adult, including both same-sex and different-sex relationships. "Committed relationship" means one in which the employee and another individual share responsibility for a significant measure of each other's common welfare, such as any relationship between individuals of the same or different sex that is granted legal recognition by a state, political subdivision, or the District of Columbia as a marriage or analogous relationship, including, but not limited to, a civil union.
- (d) "Domestic violence" has the same meaning as provided in section 1 of 1978 PA 389, MCL 400.1501.
- (e) "Earned sick time" means time off from work that is provided by an employer to an employee, whether paid or unpaid, that can be used for the purposes described in subsection (1) of section 4 of this act.
- (f) "Employee" means an individual engaged in service to an employer in the business of the employer, except that employee does not include an individual employed by the United States government.
- (g) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 1 or more individuals, except that employer does not include the United States government.
- (h) "Family member" includes all of the following:
 - (i) A biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the employee stands in loco parentis.
 - (ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee was a minor child.
 - (iii) A person to whom the employee is legally married under the laws of any state or a domestic partner.
 - (iv) A grandparent.
 - (v) A grandchild.
 - (vi) A biological, foster, or adopted sibling.
 - (vii) Any other individual related by blood or affinity whose close association with the employee is the

equivalent of a family relationship.

(i) "Health care professional" means any of the following:

(i) Any person licensed under federal law or the law of this state to provide health care services, including, but not limited to, nurses, doctors, and emergency room personnel.

(ii) A certified midwife.

(j) "Retaliatory personnel action" means any of the following:

(i) Denial of any right guaranteed under this act.

(ii) 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.

(iii) Sanctions against an employee who is a recipient of public benefits for exercise of a right guaranteed under this act.

(iv) Interference with, or punishment for, an individual's participation in any manner in an investigation, proceeding, or hearing under this act.

(k) "Sexual assault" means any act that constitutes a violation of section 520b, 520c, 520d, 520e, 520f, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, 750.520f, and 750.520g.

(l) "Small business" means an employer for which fewer than 10 individuals work for compensation during a given week. In determining the number of individuals performing work for compensation during a given week, all individuals performing work for compensation on a full-time, part-time, or temporary basis shall be counted, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. An employer is not a small business if it maintained 10 or more employees on its payroll during any 20 or more calendar workweeks in either the current or the preceding calendar year.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.963.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.963.new Earned sick time to be provided by employer; accrual; use; "year" defined; workweek; compliance; pay rate; "normal hourly wage" defined; replacement worker not required.

Sec. 3. (1) Each employer shall provide earned sick time to each of the employer's employees in this state.

(a) Employees of a small business shall accrue a minimum of one hour of earned sick time for every 30 hours worked but shall not be entitled to use more than 40 hours of paid earned sick time in a year unless the employer selects a higher limit. If an employee of a small business accrues more than 40 hours of earned sick time in a calendar year, the employee shall be entitled to use an additional 32 hours of unpaid earned sick time in that year, unless the employer selects a higher limit. Employees of a small business must be entitled to use paid earned sick time before using unpaid earned sick time.

(b) All other employees shall accrue a minimum of one hour of paid earned sick time for every 30 hours worked but shall not be entitled to use more than 72 hours of paid earned sick time per year, unless the employer selects a higher limit.

(c) Earned sick time shall carry over from year to year, but a small business is not required to permit an employee to use more than 40 hours of paid earned sick time and 32 hours of unpaid earned sick time in a single year, and other employers are not required to permit an employee to use more than 72 hours of paid earned sick time in a single year.

(2) Earned sick time as provided in this section 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, except that an employer may require an employee hired after April 1, 2019, to wait until the ninetieth calendar day after commencing employment before using accrued earned sick time.

(3) For purposes of subsection (1), "year" shall mean a regular and consecutive twelve-month period, as determined by an employer.

(4) For purposes of earned sick time accrual under this act, an employee who is exempt from overtime requirements under section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), is assumed to work 40 hours in each workweek unless the employee's normal work week is less than 40 hours, in which case earned sick time accrues based upon that normal workweek.

(5) An employer other than a small business is in compliance with this section if the employer 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). An employer that is a small business is in compliance with this section if the employer provides 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) provided further that that employees of the small business are entitled to use paid earned sick time before using unpaid earned sick time. For purposes of this subsection, “paid leave” includes but is not limited to paid vacation days, personal days, and paid time off.

(6) An employer shall pay each employee using paid earned sick time at a pay rate equal to the greater of either the normal hourly wage for that employee or the minimum wage established under the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, but not less than the minimum wage rate established in section 4 of the workforce opportunity wage act, 2014, PA 138, MCL 408.414. For any employee whose hourly wage varies depending on the work performed, the “normal hourly wage” means the average hourly wage of the employee in the pay period immediately prior to the pay period in which the employee used paid earned sick time.

(7) An employer shall not require an employee to search for or secure a replacement worker as a condition for using earned sick time.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.964.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.964.new Earned sick time; permissible uses; advance notice; incremental use; documentation; disclosure of details relating to domestic violence or sexual assault or family member's medical condition; other purposes.

Sec. 4. (1) An employer shall permit an employee to use the earned sick time accrued under section 3 for any of the following:

(a) The employee’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.

(b) For the employee’s family member’s mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the employee’s family member’s mental or physical illness, injury, or health condition; or preventative medical care for a family member of the employee.

(c) If the employee of 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.

(d) 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

(e) 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, whether or not the employee or family member has actually contracted the communicable disease.

(2) If the employee’s need to use earned sick time is foreseeable, an employer may require advance notice, not to exceed 7 days prior to the date the earned sick time is to begin, of the intention to use the earned sick time. If the employee’s need for the earned sick time is not foreseeable, an employer may require the employee to give notice of the intention as soon as practicable.

(3) Earned sick time may be used in the smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.

(4) For earned sick time of more than 3 consecutive days, an employer may require reasonable

documentation that the earned sick time has been used for a purpose described in subsection (1). Upon the employer's request, the employee must provide the documentation to the employer in a timely manner. The employer shall not delay the commencement of earned sick time on the basis that the employer has not yet received documentation. Documentation signed by a health care professional indicating that earned sick time is necessary is reasonable documentation for purposes of this subsection. In cases of domestic violence or sexual assault, one of the following types of documentation selected by the employee shall be considered reasonable documentation: (a) a police report indicating that the employee or the 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 employee or employee's family member is receiving services from a victim services organization; or (c) a court document indicating that the employee or employee's family member is involved in legal action related to domestic violence or sexual assault. An employer shall not require that the documentation explain the nature of the illness or the details of the violence. If an employer chooses to require documentation for earned sick time, the employer is responsible for paying all out-of-pocket expenses the employee incurs in obtaining the documentation. If the employee does have health insurance, the employer is responsible for paying any costs charged to the employee by the health care provider for providing the specific documentation required by the employer.

(5) An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or an employee's family member's medical condition as a condition of providing earned sick time under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or employee's family member, the employer shall treat that information as confidential and shall not disclose that information except to the affected employee or with the permission of the affected employee.

(6) This act does not require an employer to provide earned sick time for any purposes other than as described in this section.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.965.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.965.new Transfer of employee to separate division, entity, or location; retention of earned sick time; reinstatement; successor employer; unused earned sick time.

Sec. 5. (1) If an employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the employee shall retain all earned sick time that was accrued at the prior division, entity, or location and may use all accrued earned sick time as provided in section 4. If an employee separates from employment and is rehired by the same employer within 6 months of the separation, the employer shall reinstate previously accrued, unused earned sick time and shall permit the reinstated employee to use that earned sick time and accrue additional earned sick time upon reinstatement.

(2) If a different employer succeeds or takes the place of an existing employer, the successor employer assumes the responsibility for the earned sick time rights that employees who remain employed by the successor employer accrued under the original employer. Those employees are entitled to use earned sick time previously accrued on the terms provided in this act.

(3) This act does not require an employer to provide financial or other reimbursement to an employee for accrued earned sick time that was not used upon the employee's termination, resignation, retirement, or other separation from employment.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.966.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.966.new Exercise of rights under act; interference, restraint, or denial prohibited; retaliatory personnel action or discrimination prohibited; absence control policy leading to or resulting in retaliatory personnel action prohibited; person mistakenly alleging violation; rebuttable presumption of violation.

Sec. 6. (1) 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.

(2) An employer shall not take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under this act. Rights protected by this act include, but are not limited to, the right to use earned sick time pursuant to this act, the right to file a complaint or inform any person about any employer's alleged violation of this act, the right to cooperate with the department in its investigations of alleged violations of this act, and the right to inform any person of his or her rights under this act.

(3) An employer's absence control policy shall not treat earned sick time taken under this act as an absence that may lead to or result in retaliatory personnel action.

(4) The protections in this section apply to any person who mistakenly but in good faith alleges a violation of this section.

(5) There is a rebuttable presumption of a violation of this section if an employer takes adverse personnel action against a person within 90 days after that person does any of the following:

(a) Files a complaint with the department or a court alleging a violation of this act.

(b) Informs any person about an employer's alleged violation of this act.

(c) Cooperates with the department or another person in the investigation or prosecution of any alleged violation of this act.

(d) Opposes any policy, practice, or act that is prohibited under this act.

(e) Informs any person of his or her rights under this act.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.967.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.967.new Violation of act; actions by employee; enforcement by director; civil remedies; civil fine.

Sec. 7. (1) If an employer violates this act, the employee affected by the violation, at any time within 3 years after the violation or the date when the employee knew of the violation, whichever is later, may do any of the following:

(a) 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.

(b) 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.

(2) (a) The director shall enforce the provisions of this act. In effectuating such enforcement, the director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.

(b) Any person alleging a violation of this chapter shall have the right to file a complaint with the department. The department shall encourage reporting pursuant to this subsection by keeping confidential, to the maximum extent permitted by applicable laws, the name and other identifying information of the employee or person reporting the violation, provided, however, that with the authorization of such person, the department may disclose his or her name and identifying information as necessary to enforce this chapter or for other appropriate purposes.

(c) Upon receiving a complaint alleging a violation of this chapter, the department shall investigate such complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department believes that a violation has occurred, it shall issue to the offending person or entity a notice of violation and the relief required of the offending person or entity. The department shall prescribe the form and wording of such notices of violation including any method of appealing the decision of the department.

(d) The department shall have the power to impose penalties and to grant an employee or former employee all appropriate relief including but not limited to payment of all earned sick time improperly withheld, any

and all damages incurred by the complainant as the result of violation of this act, back pay and reinstatement in the case of job loss.

(3) If the director determines that there is reasonable cause to believe that an employer violated this act and the department is subsequently unable to obtain voluntary compliance by the employer within a reasonable time, the department shall bring a civil action as provided in subsection (1)(a) on behalf of the employee. The department may investigate and file a civil action under subsection (1)(a) on behalf of all employees that employer who are similarly situated at the same work site and who have not brought a civil action under subsection (1)(a). A contract or agreement between the employer and the employee or any acceptance by the employee of a paid or unpaid leave policy that provides fewer rights or benefits than provided by this act is void and unenforceable.

(4) In addition to liability for civil remedies described in this section, an employer who fails to provide earned sick time in violation of this act or takes retaliatory personnel action against an employee or former employee is subject to a civil fine of not more than \$1,000.00.

(5) An employer that willfully violates a notice or posting requirement of section 8 is subject to a civil fine of not more than \$100.00 for each separate violation.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.968.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.968.new Written notice to employee; contents; language; display of poster; creation by department; availability.

Sec. 8. (1) An employer subject to this act shall provide written notice to each employee at the time of hiring or by April 1, 2019, whichever is later, including, but not limited to, all of the following:

- (a) The amount of earned sick time required to be provided to an employee under this act.
- (b) The employer's choice of how to calculate a "year" according to subsection 3 of section 3.
- (c) The terms under which earned sick time may be used.

(d) That retaliatory personnel action by the employer against an employee for requesting or using earned sick time for which the employee is eligible is prohibited.

(e) The employee's right to bring a civil action or file a complaint with the department for any violation of this act.

(2) The notice required under subsection (1) shall be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the notice into such language.

(3) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to employees, that contains the information in subsection (1). The poster displayed should be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce, as long as the department has translated the poster into such language.

(4) The department shall create and make available to employers notices and posters that contain the information required under subsection (1) for employers' use in complying with this section. The department shall provide such notices and posters in English, Spanish, and any other languages deemed appropriate by the department.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.969.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.969.new Multilingual outreach program.

Sec. 9. The department shall develop and implement a multilingual outreach program to inform employees, parents, and persons who are under the care of a health care provider about the availability of earned sick time under this act. This program must include distribution of notices and other written materials in English and in other languages to child care and elder care providers, domestic violence shelters, schools, hospitals, community health centers, and other health care providers.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.970.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.970.new Retention of records.

Sec. 10. An employer shall retain for not less than 3 years records documenting the hours worked and earned sick time taken by employees. To monitor compliance with the requirements of this act, an employer shall allow the department access to those records, with appropriate notice and at a mutually agreeable time. If a question arises as to whether an employer has violated an employee's right to earned sick time under this act and the employer does not maintain or retain adequate records documenting the hours worked and earned sick time taken by the employee or does not allow the department reasonable access to those records, there is a presumption that the employer has violated the act, which can be rebutted only by clear and convincing evidence.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.971.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.971.new Other law, regulation, requirement, policy, or standard, including collective bargaining agreement; scope and limitation of act.

Sec. 11. (1) This act provides minimum requirements pertaining to earned sick time and shall not be construed to preempt, limit, or otherwise affect the applicability of any other law, regulation, requirement, policy, or standard, including a collective bargaining agreement, that provides for greater accrual or use of time off, whether paid or unpaid, or that extends other protections to employees.

(2) This act does not do any of the following:

- (a) Prohibit an employer from providing more earned sick time than is required under this act.
- (b) Diminish any rights provided to any employee under a collective bargaining agreement.
- (c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.
- (d) Prohibit an employer from establishing a policy that permits an employee to donate unused accrued earned sick time to another employee.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.972.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.972.new Collective bargaining agreement.

Sec. 12. If an employer's employees are covered by a collective bargaining agreement in effect on the effective date of this act, this act applies beginning on the stated expiration date in the collective bargaining agreement, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a new collective bargaining agreement.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.973.new THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE *****

408.973.new Rules.

Sec. 13. The director may promulgate rules in accordance with the administrative procedures act of 1969, Rendered Monday, November 5, 2018

1969 PA 306, MCL 24.201 to 24.328, as necessary to administer this act.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.

***** 408.974.new *THIS NEW SECTION IS EFFECTIVE 91 DAYS AFTER ADJOURNMENT OF THE 2018 REGULAR SESSION SINE DIE* *****

408.974.new Severability.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable.

History: 2018, Act 338, Eff. (sine die).

Compiler's note: Public Act 338 was proposed by initiative petition pursuant to Const. 1963, art 2, section 9. On September 5, 2018, the initiative petition was approved by an affirmative vote of the majority of the members of the Senate and an affirmative vote of the majority of the members of the House of Representatives, and filed with the Secretary of State on September 5, 2018.