

## Series 4000: District Employment

### 4100 Employee Rights and Responsibilities

#### 4113 Michigan Earned Sick Time Act (ESTA)

##### A. General

~~This Policy will only apply if ESTA is in effect.~~

Eligible employees ~~may~~will accrue ~~and use~~ paid leave as provided by the ESTA. Applicable provisions of a collective bargaining agreement, individual employment contract, or handbook, ~~which exceed the rights provided to employees under the ESTA,~~ remain in place and may provide additional paid leave time that is not provided by the ESTA.

~~If a~~Unless otherwise agreed with union representation, the ESTA does not apply to employees subject to a conflicting collective bargaining agreement ~~is~~ in effect on February 21, 2025, ~~the ESTA does not apply to employees subject to that collective bargaining agreement~~ until the collective bargaining ~~agreement's expiration date.~~ agreement expires.

The ESTA does not ~~preempt or override the terms of~~ apply to an employee subject to a ~~collective bargaining agreement~~ conflicting individual employment contract in effect on February 21, 2025, until that contract expires, if all of the following are satisfied:

- the District and the employee signed the contract on or before December 31, 2024;
- the contract is effective for not longer than 3 years; and
- the District notified the Michigan Department of Labor and Economic Opportunity (LEO) of the contract.

##### B. Definitions

1. ~~Benefit~~“ESTA benefit year” means the 12-month period ~~begins annually on July 1 or September 1, consistent with the start date of the individual contract or a collective bargaining agreement.~~
2. “Eligible employee” means an employee engaged in service to the District. The following, however, are not eligible employees:
  - a. an unpaid trainee or unpaid intern;
  - b. a person employed in accordance with the Michigan Youth Employment Standards Act, MCL 409.101, *et seq*; or

- c. positions when the employee may schedule their own working hours as approved by the Superintendent or designee. For those approved positions, the District will not take adverse personnel action for failure to schedule a minimum amount of working hours.

If a collective bargaining agreement or contract meets the requirements in Section A above, then an employee covered by that contract is not an eligible employee until the contract expires.

3. "Family member" is defined as:

- a. biological, adopted, or foster child, stepchild or legal ward, a child of a domestic partner, or a child to whom the eligible employee stands *in loco parentis*;
- b. biological parent, foster parent, stepparent, or adoptive parent or legal guardian of an eligible employee or an eligible employee's spouse (under the laws of any state) or domestic partner or a person who stood *in loco parentis* when the eligible employee was a minor child;
- c. an individual to whom the eligible employee is legally married under the laws of any state or a domestic partner;
- d. grandparent, grandchild, and biological, foster, or adopted sibling;
- e. ~~any other~~ an individual related by blood; or ~~affinity~~
- f. an individual whose close association with the eligible employee is the equivalent of a family relationship.

4. "Earned sick time" means paid leave as allowed by the ESTA.

5. All other ESTA-defined terms apply to this Policy.

### C. Eligibility

#### C. Wait Period and Leave Reinstatement Upon Re-Employment

A newly hired eligible employee may not use accrued earned sick time until ~~90~~120 calendar days after the employee's start date, unless otherwise provided in a collective bargaining agreement, individual employment contract, employee handbook, or ESTA. ~~If a collective bargaining agreement is in effect on February 21, 2025, bargaining unit members are not eligible employees until the collective bargaining agreement's expiration date~~the ESTA.

#### D. ~~Accrual of~~ ESTA Leave

~~Unless subject to a grandfathered collective bargaining agreement,~~ an Upon discharge or other separation from employment, an employee automatically loses accrued earned sick time unless the employee is rehired by the District within 2 months of the separation.

Accrued earned sick time that is not used before an employee's separation from employment will have no monetary value. If an employee separates from employment and is rehired by the District not more than two (2) months after separation, the District will reinstate previously accrued and unused earned sick time and allow the employee to use that earned sick time and accrue additional earned sick time upon reinstatement. This paragraph does not apply if the District paid the employee the value of the employee's unused accrued earned sick time at the time of separation.

## D. ESTA Leave Accrual and Frontloading

### 1. Leave Accrual

Unless the District frontloads earned sick time under Section D(2), an eligible employee begins accruing earned sick time on February 21, 2025 or the employee's start date, whichever is later.

An eligible employee will ~~receive~~ accrue 1 hour of earned sick time for every 30 hours worked, but the eligible employee may only use up to 72 hours of earned sick time in a single ESTA benefit year. An FLSA-exempt eligible employee is assumed to work 40 hours per workweek unless the employee's normal workweek is less than 40 hours.

~~Accrued leave~~ Up to 72 hours of unused accrued earned sick time will carry over from ESTA benefit year to ESTA benefit year.

### 2. Frontloading Leave

For each ESTA benefit year, the District may frontload earned sick time ~~in increments that comply~~ consistent with ~~the ESTA~~ this policy, a collective bargaining agreement, or individual employment contract.

~~If ESTA is in effect, leave for any ESTA qualifying circumstances up to a maximum of 72 hours per benefit year~~ frontloading, the District will ~~run concurrently with other paid leave benefits as allowed by ESTA. When an~~ grant a full-time eligible employee ~~uses other paid leave benefits for an~~ 72 hours of earned sick time at the beginning of an ESTA benefit year. For a part-time eligible employee, the District will provide the employee with:

- a written notice of how many hours the employee is expected to work during the ~~ESTA qualifying circumstances,~~ benefit year at the ~~employee's paid~~ time of hire;
- an amount of earned sick time at the beginning of the ESTA benefit year that is ~~first deducted~~ proportional to the earned sick time the employee would accrue if the employee worked all the hours in that written notice; and

- 1 hour of earned sick time for every 30 hours worked after the employee exceeds the work hours in that written notice.

Frontloaded earned sick time will not carry over from ~~the earned sick time accrued~~ one ESTA benefit year to the next unless authorized in the applicable collective bargaining agreement, individual employment contract, or handbook.

### 3. Compliance Presumption

The District is in compliance with this Section D if it:

- provides an eligible employee with paid time off in at least the same amounts of time off described in the ESTA that may be used for ESTA purposes or any other approved purpose, with the time used for an ESTA purpose being subject to the ESTA; or
- is a signatory to a collective bargaining agreement that requires contributions to a multiemployer plan under the Employee Retirement Income Security Act, subject to certain conditions.

### E. Additional Absences

Additional absences, above and beyond earned sick time under ~~the~~ ESTA, are governed by an applicable collective bargaining agreement, individual employment contract, or Board Policy.

~~As used in this subsection, "other paid leave" benefits includes but is not limited to paid vacation days, personal days, sick days, and other paid time off. Earned sick time can be used for the purposes, and subject to the conditions, described below:~~

### ~~E. Qualifying Circumstances~~

### F. Permissible Uses

An eligible employee may use earned sick time for the following reasons:

1. 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;
2. 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;

3. if the employee or 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;
4. 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
5. 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.

G. Use of ~~ESTA Leave~~ Earned Sick Time

~~When requesting use of earned sick time, if~~ the eligible employee's need to use leave is foreseeable, the employee must provide notice to the District of the employee's intent to use earned sick time at least 7 days prior to the date leave is to begin. If the eligible employee's need to use leave is not foreseeable, the employee must provide notice to the District of the employee's intent to use earned sick time as soon as practicable. For leave of more than 3 consecutive days, upon District request, the eligible employee must provide the District ~~in a timely manner with~~ within 15 days after the request – reasonable documentation that earned sick time was used for an ESTA purpose. The District will be responsible for paying the eligible employee's ~~expenses~~ costs in obtaining the requested documentation.

In cases of domestic violence or sexual assault, ~~sufficient~~ reasonable documentation includes any of the following:

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

All health, sexual assault, and domestic violence information and documentation received from an employee about earned sick time remains confidential and will not be disclosed, except to the employee, with the employee's written permission, or as and to the extent required by law.

Failure to comply with notice procedures or document requests to support the use of earned sick time, **or using earned sick time for a non-permissible use**, may result in discipline, including discharge.

Unless otherwise provided in an employee's collective bargaining agreement, individual employment contract, or handbook:

- earned sick time must be used in **hourly** increments; **and**
- an employee using earned sick time will not receive overtime pay, holiday pay, or bonuses for the earned sick time.
- ~~• upon discharge or other separation from employment, an employee automatically loses accrued earned sick time unless the employee is rehired by the District within 6 months of the separation; and~~
- ~~• accrued earned sick time that is not used before an employee's discharge or any other separation from employment will have no monetary value, subject to the ESTA requirement to reinstate previously accrued and unused earned sick time if the employee is rehired by the District within 6 months of the separation.~~

#### H. Notice and Recordkeeping

The District will:

1. provide an ESTA notice created by ~~the Michigan Department of Labor and Economic Opportunity~~LEO to each eligible employee at hire or by ~~February 24~~March 23, 2025, whichever is later (see 4113-F);
2. display in a conspicuous location in each of its buildings the ESTA poster created by ~~the Michigan Department of Labor and Economic Opportunity~~LEO; and
3. retain for not less than 3 years records documenting hours worked and earned sick time taken by **eligible** employees.

Legal authority: MCL 408.934b, 408.961 et seq., *Mothering Justice v Attorney General*, 2024 Mich LEXIS 1454 (July 31, 2024)

Date adopted:

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