



Aiming to reduce the impact of the 2018 ballot initiative, House Bill 4002 passed both the Michigan House and Senate late last night and received Governor Whitmer's signature today, implementing significant amendments to the Earned Sick Time Act (ESTA). This legislation expands employee leave rights and increases employer obligations, impacting businesses across Michigan, including real estate brokerages. **It is important to note that this bill applies to employees and does not include independent contractors.** However, brokerages with more than 10 employees must make several changes to their policies and practices to comply with the new law, which has immediate effect.

Brokerages and teams should be aware that House Bill 4002 will affect companies with paid staff. The new law uses 10 or fewer employees as a dividing line for the treatment of "small business." For those businesses with more than 10 employees the new law mandates up to 72 hours of paid sick leave annually. Sick time hours accrue at a rate of 1 hour for every 30 hours worked. For businesses with less than 10 employees they will need to provide 40 hours of paid sick leave, accrued in the same manner as larger business. **Businesses with less than 10 employees will have until October 1, 2025 to meet these requirements.**

One key change is that businesses can now front-load sick time, meaning they can provide the required leave upfront to ease tracking requirements for accrual. Existing paid time off (PTO) banks can be used to meet the sick leave requirements, provided these policies offer the same usage rights as those under ESTA. This flexibility should help businesses with existing leave policies streamline their compliance efforts.

To ensure full compliance, brokerages should review and update their policies. Brokerages should clearly communicate these changes to their employees and implement systems for tracking sick leave accrual and usage. Furthermore, businesses should establish written policies detailing the process by which employees can request and use sick leave. This includes ensuring that employees are required to notify employers in advance when they take sick leave, in accordance with a written policy that must be established at the time of hire.

Additionally, the bill removes the rebuttable presumption for complaints filed against employers and allows for adverse personnel actions if employees use sick time for non-eligible time off. These provisions aim to give employers more flexibility in managing sick leave and enforcing compliance. Brokerages should ensure that their employee handbooks reflect these new provisions and provide clear guidance on how sick leave should be used.

It's crucial for brokerages with more than 10 employees to establish accurate record-keeping systems to track sick leave and other related data. Failure to comply could result in penalties of more than \$1,000 per offense, so it's essential to implement procedures that minimize risk. Brokerages should consult with legal counsel or a human resources representative to ensure their operations align with the updated requirements.

Again, the Michigan Department of Labor and Economic Opportunity's (LEO) FAQs, confirm that independent contractors are not covered under the Earned Sick Time Act. Michigan REALTORS® also adheres to the IRS definition of an independent contractor, which includes key factors such as behavioral control, financial control, and the nature of the relationship to determine worker classification. Michigan's Occupational Code further reinforces the independent status of real estate professionals, ensuring that they remain unaffected by this legislation.

Please note that this document is for informational purposes only and does not constitute legal advice. For further guidance, please consult legal counsel or a human resources advisor.