

# Management Alert



## If Pain, Yes Gain — Part 61: Michigan Releases Paid Sick Leave Poster and FAQs; Effective Date is Near

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**Seyfarth Synopsis:** In advance of the upcoming March 29, 2019 effective date of the Michigan statewide paid sick leave mandate, the state Department of Licensing and Regulatory Affairs launched a website for the law featuring a paid sick leave model poster and FAQs. These developments come as the state Legislature seeks constitutional clarity on the procedure that led to the amended paid sick leave law and calls into question whether the law, as amended, will in fact be the one to take effect.

When the outgoing Michigan Legislature and Governor enacted the Paid Medical Leave Act (“PMLA”) in December 2018, they revamped the state’s earlier paid sick leave mandate—the Earned Sick Time Act (“ESTA”)—in a number of significant ways. As discussed in more detail in our [PMLA alert](#), while many of the amendments lessened employers’ compliance obligations, Michigan employers nevertheless still face a looming sick leave mandate. That mandate—the PMLA—goes into effect on March 29, 2019, less than three weeks from now.<sup>1</sup>

The ESTA was enacted in September 2018 to avoid a voter referendum on the same legislation and afford the state Legislature an easier path to amending the ESTA than would be required as part of the state’s general legislative process. In the months following the passage of the PMLA, the Department of Licensing and Regulatory Affairs (“LARA”) has confirmed the PMLA’s March 29 effective date and issued a [website](#) with [frequently asked questions](#) (“FAQs”) and a [model poster](#). As discussed below, employers can use the latter to satisfy the PMLA posting requirement. With LARA preparing for the PMLA to go into effect, here is a summary of the PMLA posting obligation and highlights from the FAQs.

### Poster

Unlike some paid sick leave laws, the PMLA does not specifically require an employer to provide individual written notice to current and newly hired employees of certain sick leave rights. However, under the PMLA, employers must still display a poster in a conspicuous place regarding the PMLA. As contemplated by the PMLA, LARA has released the English language version of the poster that employers may use to satisfy this requirement. Although the PMLA contains no specific provision stating that the poster must be displayed in specific languages, LARA has noted that Spanish and Arabic versions of the poster are forthcoming.

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<sup>1</sup> As of March 29, Michigan will become the eleventh state in the country to have a statewide paid sick leave mandate in effect. The existing statewide paid sick leave laws include: (1) [Connecticut](#); (2) [California](#); (3) [Massachusetts](#); (4) [Oregon](#); (5) [Vermont](#); (6) [Arizona](#); (7) [Washington](#); (8) [Maryland](#); (9) [Rhode Island](#); and (10) [New Jersey](#).

## FAQs

For the most part, the PMLA FAQs reiterate the provisions of the law either verbatim or in short form. However, the FAQs do provide further detail on the rate of pay for tipped employees' paid sick time absences. Specifically, the PMLA states that employees will be paid "at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the [state] minimum wage rate."<sup>2</sup> The FAQs add that the regular rate is the applicable minimum wage rate for tipped employees. Beyond this clarification, the FAQs provide some insight into how LARA will investigate and potentially attempt to mediate any employee complaints.

## Questions Surrounding the PMLA

Despite the PMLA's current March 29 effective date, questions surrounding its longevity are gaining steam. The outgoing Michigan Attorney General [previously opined](#) that no provision in Michigan's Constitution prevented the state Legislature from amending a proposed ballot initiative during the same session that the Legislature had enacted that same initiative.

This opinion stands opposite to the 1964 opinion of Michigan Attorney General Frank Kelley, which has been highlighted by state Senators that have [recently called](#) on the new Attorney General to reevaluate last year's opinion and determine whether the PMLA was passed in violation of the Michigan Constitution. The current Attorney General pledged to evaluate the request and solicited comments from the public through March 6. These opinions, while noteworthy, do not carry binding legal force. By issuing formal opinions, the Attorney General provides "legal advice to the Legislature, and to departments and agencies of state government," all of which are not bound by the advice.<sup>3</sup> Moreover, the Attorney General opinions tend to fall along party lines.

At the same time, as permitted by Michigan law, both houses of the state Legislature have requested an advisory opinion from the Michigan Supreme Court as to the constitutionality of the PMLA.<sup>4</sup> Whether the Supreme Court issues such an opinion lies entirely with the Court's discretion. Further, "an advisory opinion does not constitute a decision of the Court and is not . . . binding in the same sense as a decision of the Court after a hearing on the merits."<sup>5</sup> However, such an opinion against the PMLA's constitutionality may halt the PMLA either by decision of officials thereafter, or via subsequent actual litigation with the same conclusion.

## Employer Takeaways:

We will continue to monitor Michigan paid sick leave developments, and await additional guidance from the state. Despite questions surrounding the PMLA's constitutionality and potential opinions thereon, Michigan employers should take steps now to comply with the PMLA ahead of its March 29 effective date. These are among the actions to consider:

- Review existing sick leave policies and either implement new policies or revise existing policies to satisfy the PMLA.
- Develop a new paid sick leave policy that complies with the PMLA for any employees who are not covered under existing paid sick leave or PTO policies.
- Monitor LARA's website for further information on the PMLA, including regulations, translated versions of the model poster, etc.

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<sup>2</sup> Like the ESTA and PMLA, a state minimum wage ballot initiative was also adopted in September, subsequently amended, and approved by the outgoing governor in December. Also scheduled to go into effect on March 29, LARA released an updated [webpage](#) for the minimum wage law as well.

<sup>3</sup> See *East Grand Rapids School Dist. v. Kent County Tax Allocation Bd.*, 415 Mich 381, 394 (1982).

<sup>4</sup> The Michigan House and Senate resolutions are available [here](#) and [here](#).

<sup>5</sup> See *In re Request for Advisory Opinion Enrolled Senate Bill*, 400 Mich. 311, 322 (1977).

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