

THE  
NATIONAL LAW REVIEW

---

## Michigan's Senate and House of Representatives Adopt Changes to the Paid Sick Leave Act

---

Thursday, December 6, 2018

On December 4, 2018, the Michigan Senate and House of Representatives passed [the Paid Medical Leave Act](#), which makes wholesale changes to the state's paid sick leave proposal and is on its way to Governor Rick Synder for his signature. On September 5, 2018, the two chambers adopted [a citizen-initiated paid leave ballot proposal](#). This action removed the paid sick leave initiative from the November 2018 general elections ballot and allowed the Michigan Senate and House to craft changes that protect the core concept of paid leave while making the law less administratively difficult for Michigan employers. For example, the substitute bill limits the scope of coverage, reduces the level of benefits, and alleviates the administrative burdens of the ballot initiative.

Once signed into law, the scope of the paid sick leave law will be more limited than the initial proposal. Businesses with fewer than 50 employees are not covered and employees who are exempt from the overtime pay under the Fair Labor Standards Act's "white collar" exemptions (executive, administrative, professional employees and outside salespersons) are not eligible for paid sick leave. Private sector employees covered by a collective bargaining agreement, seasonal workers, part-time workers, and variable hour workers are also not eligible.

The bill reduces the level of benefits. The original ballot proposal would have allowed employees to accrue 72 hours of paid leave in a 12-month period with one hour accrued for every 30 hours worked. The bill reduces the maximum amount of paid sick leave to 40 hours in a 12-month period, which accrues at a rate of one hour for every 35 hours worked, with a cap of one hour accrued per workweek regardless of the number of hours worked. Employers will also have the option of providing 40 hours of paid sick leave at the beginning of the benefit year if they are not inclined to administer the accrual tracking otherwise required under the Act. Further, the bill creates a rebuttable presumption that an employer is in compliance with the Act if it provides 40 hours of paid leave, including vacation days, personal days, and other paid time off, to eligible employees each benefit year.

Overall, the bill addresses many of the administrative concerns raised by the initial ballot proposal. For example, the definition of "family member" no longer includes individuals related by affinity, which would have opened the door to taking paid leave to care for a neighbor or even a friend. The provision that would have allowed employees to take paid leave in the smallest increment that the employer's payroll system uses to account for absences has been replaced with a provision that paid leave must be taken *in at least one hour increments*.

There have also been significant changes to how employees must request and substantiate their need for paid leave. Employers will now be able to enforce their usual and customary notice, procedural, and documentation requirements for requesting leave and discipline employees for violations with the caveat that employers must provide eligible employees at least three days to provide documentation. Also, the provision that would have made employers responsible for the employee's out-of-pocket costs of obtaining a doctor's note has been eliminated.



Article By  
[Daniel G. Cohen](#)  
[Ogletree, Deakins, Nash, Smoak & Stewart, P.C.](#)  
[Our Insights](#) [Health Law & Managed Care](#)  
[Labor & Employment](#)  
[Election Law / Legislative News](#)  
[Michigan](#)

Importantly, the bill has eliminated the private cause of action and retaliatory personnel action provisions and reduced the limitations period from three years to six months. Thus, an eligible employee who believes his or her rights have been violated must file an administrative complaint with the Michigan Department of Licensing and Regulatory Affairs within six months.

The governor is expected to quickly sign the substitute bill into law. If that happens, the law will likely take effect on or about April 1, 2019.

© 2019, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All Rights Reserved.

**Source URL:** <https://www.natlawreview.com/article/michigan-s-senate-and-house-representatives-adopt-changes-to-paid-sick-leave-act>