NORTHERN MICHIGAN CHAMBER
ALLIANCE
ALPENA • BENZIE • CADILLAC • CHARLEVOIX • GAYLORD
PETOSKEY • TRAVERSE CITY • MANISTEE • MARQUETTE

MEMORANDUM

TO: Michigan Legislators
FROM: Presidents of the Northern Michigan Chamber Alliance
Kent Wood, Director of Government Relations
DATE: November 26, 2018
RE: SB 1175, amendments to the Earned Sick Time Act

Recently, Senate Bill 1175 was introduced to make amendments to the Earned Sick Time Act. We are grateful for this legislation and attempt to amend this very ambiguous new mandate. We have heard consistently about the significant burden and liability this places on employers throughout the state, especially small businesses.
Mack
While this bill would indeed lighten the burden of this act for employers, we believe there is more that can be done to assist business owners in dealing with these challenging and inconsistent new laws, while staying true to the overall intent of the proposal.

Below are several suggestions we have based on feedback from the business community in northern Michigan.

Exemption for certain employers, employees
While all employers will have new obligations under ESTA, those obligations are not assumed equally. Most, if not all, large employers already provide paid leave policies, and most have Human Resources staff to implement and assist with compliance. It is small employers who will truly bear the additional burden of not only providing paid leave policy where they might have had none previously, but with tracking, record keeping, and added liability. We suggest:

- An exemption for small employers.
- An exemption for part-time, seasonal or training employees, and interns.

Amend statute of limitations
Senate Bill 1175 as introduced would lower the requirement for employers to retain certain paperwork pertaining to the ESTA from 3 years to six months. This would allow for consistency with the paperwork requirements and be more in line with paperwork retention requirements in other employment statutes. We strongly support keeping this change, but would additionally recommend adjusting the statute of limitations from 3 years to six months as well.

Requests for medical or other information
A fitness for duty certification is a standard procedure that is used by employers under other employment acts, including FMLA and the ADA, to ensure that an employee is eligible to return to work, and to identify what restrictions, if any, the employee requires. We believe the strict language of ESTA prohibiting an employer from requesting medical information would not allow for an employer to use this necessary procedure to protect their interests as well as the interests of the subject employee and the interest of the other employees. We suggest:

- Maintain consistency with other employment laws by allowing employers to require a fitness for duty certification, when necessary, prior to allowing an employee to return to work.
- Strike the provision that requires employer to pay for costs of information or verification. This is inconsistent with other employment laws.

Address frontloading and carryover

Many employers would prefer the ability to frontload earned sick time (i.e. - provide all earned sick time at time of hire or beginning of the year that an employee then draws from throughout the year) similar to many PTO policies. There is also much confusion about the employer's obligation to allow unused paid sick leave to be carried over. We suggest:

- Make the ESTA language clear to allow employers to frontload their earned sick time program.
- Place a cap on how much earned sick time can accrue and carryover, if any, from one year to the next.

Damages

Allowing liquidated damages in a civil action pursuant to Section 7 without a finding of willfulness on the part of the employer would usher in a new precedent in Michigan employment law. There is nothing comparable in other employment laws (e.g. wage and hour laws allow for liquidated damages upon a finding of willfulness, and the ADEA allows for liquidated damages upon a finding of willfulness). Allowing liquidated damages would double the amount of the financial liability and create more uncertainty for small employers. Calculation of the actual costs of a violation of the act by an employer should be rather easily calculated. We recommend removing the assessment of liquidated damages entirely or, at a minimum, making assessment of liquidated damages allowable only upon a finding of willfulness.

Use more carrots

The current ESTA is very punitive and assumes the worst in employers and the best in employees. In reality, most employers currently provide some sort of sick leave or paid time off. We feel there are a number of ways policy makers could further incentivize employers to go above and beyond what they currently provide employees in paid and unpaid leave.

- Exempt employers from the burdensome reporting requirements if they offer sick time or paid time off policies that are more generous than the act.
- Assuming the legislature moves to provide the exemptions suggested above, offer an incentive to small employers who provide a paid leave policy, or employers who include part-time, seasonal, or interns in their paid leave policies.