

Improved Workforce Opportunity Wage Act



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Minimum Hourly Wage

The Improved Workforce Opportunity Act sets the minimum hourly wage as follows:

- January 1, 2019: \$9.45
- January 1, 2020: \$9.65
- January 1, 2021: \$9.87
- January 1, 2022: \$10.10
- January 1, 2023: \$10.33
- January 1, 2024: \$10.56
- January 1, 2025: \$10.80
- January 1, 2026: \$11.04
- January 1, 2027: \$11.29
- January 1, 2028: \$11.54
- January 1, 2029: \$11.79
- January 1, 2030: \$12.05

No increase if prior year unemployment rate is 8.5% or higher

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Tipped Employees

Increases minimum hourly wage for tipped employees as follows:

- January 1, 2019: 38% of \$9.45 (\$3.59)
- January 1, 2020: 38% of \$9.65 (\$3.67)
- January 1, 2021: 38% of \$9.87 (\$3.75)
- January 1, 2022: 38% of \$10.10 (\$3.84)
- January 1, 2023: 38% of \$10.33 (\$3.93)
- January 1, 2024: 38% of \$10.56 (\$4.01)
- January 1, 2025: 38% of \$10.80 (\$4.10)
- January 1, 2026: 38% of \$11.04 (\$4.20)
- January 1, 2027: 38% of \$11.29 (\$4.29)
- January 1, 2028: 38% of \$11.54 (\$4.39)
- January 1, 2029: 38% of \$11.79 (\$4.48)
- January 1, 2030: 38% of \$12.05 (\$4.58)

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Paid Medical Leave Act (PMLA)



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PMLA Basics

The goal of the PMLA is to allow employees to accrue and use paid medical leave.



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Who is an employer and who is an employee under the PMLA?

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Covered Employers

- Any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. §2(f)
- The law does not say how many weeks per year an employer must employ 50 or more individuals to be covered.
- Nor does the law clarify whether it is 50 employees in the State of Michigan.

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Eligible Employees

An individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes. §2(e)

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Ineligible Employees

- Overtime exempt under FLSA.
- Not employed by a public agency (FLSA definition) + covered under current CBA.
- Federal workers or employees who work for the government of other states.
- Flight deck or cabin crew members.
- Employees as defined in the Railway Labor Act or Railroad Unemployment Insurance Act.
- Primary work location not in Michigan. §2(e)

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Ineligible Employees

- Employees covered by Section 4b of the Minimum Wage Act (Workforce Opportunity Wage Act).
- Certain employees who work for a temporary help firm.
- Seasonal Workers: Individual employed for 25 weeks or fewer in a year for a job scheduled for 25 weeks or fewer.
- Variable hour employees as defined under federal regulation.
- Employee who worked, on average, fewer than 25 hours per week during the previous calendar year. §2(e)

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What is the rate of accrual of paid medical leave under the PMLA?

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- Eligible employees accrue one hour of paid medical leave for every 35 hours worked or per calendar week. §3(2)
 - An employer may choose to provide more.
 - "An employer is not required to allow an eligible employee to accrue more than 1 hour of paid medical leave in a calendar week."
- "Hours worked" does not include hours taken off from work by an eligible employee for paid leave. §3(7)

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- Employers can limit accrual to 40 hours a year. §3(2)
- Alternative: front loading 40 hours of paid medical leave at the beginning of the year is permitted. §3(3)
- Alternative: an employer is presumed to be in compliance if it provides at least 40 hours of "paid leave" each benefit year. §3(5)

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- **Employees hired prior to the effective date:** paid medical leave begins to accrue as soon as the PMLA takes effect. Those employees may use the paid medical leave as it accrues. §3(4)
- **Employees hired after the effective date:** paid medical leave begins to accrue from the first date of employment, but employers may require that a new employee not use any accrued paid medical leave until the 91st day after commencing employment. §3(4)

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What is a "benefit year"?

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A "benefit year" is any consecutive 12-month period used by the employer to calculate an eligible employee's benefits. §2(a)

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How much accrued paid medical leave may an employee use?

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- All eligible employees are entitled to use up to 40 hours of earned paid medical leave a year (unless employer allows more). §3(2)
- An employee may carry over up to 40 hours of accrued unused paid medical leave from benefit year to benefit year. However, an employee is not entitled to take more paid medical leave than the amounts allotted for a single year (i.e., subject to 40-hour limit). § 3(1)(c)

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- Paid medical leave must be used in 1-hour increments, unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document. §4(3)

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What are the permitted uses of paid medical leave?

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Permitted uses of paid medical leave

- Mental or physical illness or injury of the eligible employee or the employee's family member;
- Medical diagnosis or treatment of an illness or injury of the eligible employee or the employee's family member;
- Preventative medical care for the eligible employee or the employee's family member;
- For matters arising from the eligible employee or the employee's family member being a victim of domestic violence or sexual assault; §4

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Permitted uses of paid medical leave (cont.)

- If the eligible employee's place of business is closed due to a public health emergency;
- If the eligible employee's child's school or place of care is closed due to a public health emergency and the employee needs to care for the child; or
- If a public official or healthcare provider determines that the health of others may be jeopardized because of the employee or the employee's family member's exposure to a communicable disease. §4

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Family Member:

- Child (biological, adopted, step, foster, legal ward, in loco parentis)
- Grandchild
- Spouse (must be legally married)
- Parent (biological, foster, step, adoptive, legal guardian)
 - of eligible employee or employee's spouse (so "in-laws" are included)
 - Person who stood in loco parentis to employee when s/he was a minor
- Grandparent
- Sibling (biological, foster or adopted) §2(g)

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Can an employer require documentation?

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- Employee must comply with usual and customary notice, procedural and documentation requirements for leave. §4(2)
- Employer must give employee at least 3 days to provide documentation. §4(2)
- Employer may discipline for failure to comply.
- What about FMLA?

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At what rate do employees need to be paid when taking paid medical leave?

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- Equal to or greater than normal hourly rate or base wage or applicable minimum wage. §3(6)
- An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities in the calculation of an eligible employee's normal hourly wage or base wage. § 3(6)

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May an employer require an employee to search for a replacement worker when taking paid medical leave?

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PMLA is silent on this question.

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If an employee never uses the employee's accrued paid medical leave, does the employer have to compensate the employee for that time?

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- No.
- “This act does not require an employer to provide financial or other reimbursement to an eligible employee for accrued paid medical leave that was not used before the end of a benefit year or before the eligible employee’s termination, resignation, retirement, or other separation from employment.” § 5(2)
- If an employee is terminated and then rehired by the same employer, the employee loses all accumulated unused paid medical leave. §5(1)

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Are employers required to provide notice of an employee’s rights under this Act?

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PMLA Notification Requirement

- Employer shall display a poster at the employer’s place of business, in a **conspicuous place** that is accessible to eligible employees.
- The posters will be made available by the Department of Licensing and Regulatory Affairs at no cost to employers. §§ 8(3) and (4)
- Notice must include:
 - Amount of paid medical leave required to be provided to an eligible employee under the PMLA;
 - Under what conditions an employee may use paid medical leave under the PMLA; and
 - An eligible employee’s right to file a complaint with the Department of Licensing and Regulatory Affairs against the employer for violating the Act. § 8(1)

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How does the PMLA define “retaliatory” actions?

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There is no anti-retaliation language in the Act.

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What document retention policies are required by the PMLA?

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- Employers must retain the records documenting hours worked and paid medical leave taken by employees for at least one year.
- Employers must allow the Department of Licensing and Regulatory Affairs to inspect these records at any reasonable time. §10

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What are the damages and fines for violating the PMLA?

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- Within 6 months after the violation, an employee may file a claim with the Department of Licensing and Regulatory Affairs. § 7(1)
- The Department of Licensing and Regulatory Affairs will enforce, receive complaints, and investigate non-compliance with the PMLA. The Department may also act as a mediator between employees and employers in resolving disputes under the PMLA. §§ 7(2)-(3)
- The Department, after issuing a notice of violation to an employer, may impose penalties on the employer or grant relief to the employee of all paid medical leave improperly withheld. Additionally, the employer may be liable for up to a \$1,000 administrative fine for violating this act. §§ 7(3)-(5)
- Employers that violate the posting requirement may be subject to a \$100 administrative fine per violation. §7(6)
- Civil action?

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What do you do right now?

- Financial
- Record Keeping
- Timing
- Vacation/PTO/Paid Sick Time
- Attendance Policy
- Communication
- Employee Turnover and Engagement
- Union Contracts

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Financial

- Let your CFO and CEO know we have answers . . . for now.
- This could increase your labor costs.

Record Keeping

- Explore your HRIS/Payroll systems.
- What are they capable of tracking?
- How are you going to mechanically keep track of this?

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Timing

- Look at your benefit year for purposes of vacation/PTO/medical leave, attendance and FMLA.
- Are you calendar based?
- Do they roll with the employee's seniority date?
- You need to know this as you work through your options.

Vacation/PTO/Paid Sick Time

- Look at all your policies where you pay people to not be at work.
- Do you want to rob Peter to pay Paul?
- Do you want existing PTO to be used for PMLA purposes?

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Coordinating Benefits

- What are your STD/LTD policies/practices right now?
- Start looking at how you might want to amend them to encourage employees to use their 40 hours.

Attendance Policy

- The Act is silent on whether you can give an attendance point for using PMLA. Would it be a violation of the law?
- What is your attendance policy?
- Is it points based?
- Should you amend it?
- This will force employees to use their PMLA benefits.

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Designing your Policy

- Where are you getting the money?
- Where are you getting the time?
- Will you front load or accrue?
- In what increment do you want to let them use time? Need to amend policies and put it in writing.

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Communication

- Do you want to manage employee expectations?
- Do you want to tell employees right now what policies and practices may be impacted?

Employee Turnover and Engagement

- How is your turnover and engagement?
- Managing this based only on cost might result in increased turnover and decreased employee engagement.

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Union Contracts

- What effect does the PMLA have on Union Negotiated Contracts or Collective Bargaining Agreements (CBA)?
- If employees are covered by a CBA, the Act does not apply. But if the contract expires, the Act appears to apply.

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Questions and Answers



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Thank You!

Louis C. Rabaut lrabaut@wnj.com 616-752-2147	C. Ryan Grondzik rgrondzik@wnj.com 616-752-2722
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Ojone E. Ameadaji
oameadaji@wnj.com
616-752-2517

Warner Norcross + Judd LLP
900 Fifth Third Center, 111 Lyon Street N.W., Grand Rapids, MI 49503

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