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Paid Sick Leave on Federal Prevailing Wage Projects: How Michigan's Earned Sick Time Act and Executive Order 13706 Work Together

Construction contractors performing federal prevailing wage work in Michigan are covered by both Michigan's Earned Sick Time Act ("ESTA") and Executive Order 13706 (which requires paid sick leave on covered federal contracts).

While neither law cancels the other, a contractor does not need to maintain two separate sick leave banks to comply with their requirements — one properly designed policy can satisfy both.

Executive Order 13706 applies to certain federal contracts, including federal construction contracts covered by the Davis-Bacon Act and service contracts covered by the Service Contract Act. It covers employees who work "on or in connection with" a covered contract, including both the trades workers performing the contract work itself and employees performing work necessary to the contract, such as certain payroll or site-security functions. Covered employees accrue at least one hour of paid sick leave for every 30 hours worked on or in connection with a covered contract. Contractors may cap annual accrual at 56 hours, and they may satisfy the accrual rules by frontloading at least 56 hours at the start of each accrual year.

ESTA took effect on February 21, 2025, and requires more. While ESTA uses the same basic accrual rate of one hour of paid sick time for every 30 hours worked, most employers must allow employees to use up to 72 hours per year. Small businesses (generally those with 10 or fewer employees) may limit paid use to 40 hours per year.

These two requirements do not displace each other. The United States Department of Labor has stated that nothing in Executive Order 13706 excuses noncompliance with any state or local law that requires greater paid sick leave rights and that compliance with a state sick leave law does not excuse a contractor from complying with the Executive Order.

Complying with both laws does not mean paying twice for the same absence or maintaining separate "ESTA" and "federal" leave banks. The Department of Labor has confirmed that an existing paid time off ("PTO") policy can satisfy Executive Order 13706 if it provides at least the same rights and benefits the Order requires and allows use for the Order's covered purposes.

For a Michigan contractor on covered federal work, a single compliant policy generally should:

1. Provide at least one hour of paid sick time for every 30 hours worked, and allow most employees to use at least 72 hours per year (40 for qualifying small businesses, unless the Executive Order requires more for covered employees);
2. Ensure that at least 56 hours of leave satisfies every Executive Order condition for employees working on or in connection with covered federal contracts;
3. Permit use for all reasons both laws require, with notice and documentation rules no stricter than either law allows;
4. Track accrual, use, carryover, and balances well enough to satisfy both Michigan and federal recordkeeping obligations; and
5. Keep required sick leave entirely separate from Davis-Bacon wage and fringe benefit calculations.

Union contractors have one more factor to take into consideration. Under ESTA, if a collective bargaining agreement in effect on ESTA's effective date conflicts with ESTA's requirements, ESTA only applies when the agreement expires or is amended.

Contractors performing federal prevailing wage work in Michigan should review their paid leave policies against both requirements.