

Differences Between PMLA & Pending ESTA

Employer Coverage	
PMLA	ESTA
Person, firm, business, educational institution, nonprofit agency, corporation, LLC, government entity, or other entity that employs 50 or more individuals	Person, firm, business, educational institution, nonprofit agency, corporation, LLC, government entity, or other entity that employs 1 or more individuals

Ineligible Employees	
PMLA	ESTA
<ol style="list-style-type: none"> 1. FLSA exempt employees 2. Individuals not employed by a public agency and covered by a CBA in effect 3. Certain transportation employees 4. Minors and employees under 20 paid a training wage during first 90-days of employment 5. Temporary employees employed by temporary agencies 6. Direct hire temporary employees if employed for 25 weeks or fewer during calendar year in a job scheduled for 25 weeks or fewer 7. Variable hour employee under the ACA 8. Individual who worked, on average, less than 25 hours per week during immediately preceding calendar year 9. Individual whose primary location is not in Michigan 	Individual whose primary work location is not in Michigan (though not explicit)

Rehired Employees	
PMLA	ESTA
Employee loses all unused paid medical leave upon separation from employment	Employee retains all unused paid sick time if rehired within 6-months

Leave Accrual	
PMLA	ESTA
1. One (1) hour for every 35 hours worked 2. May limit accrual of paid medical leave to no more than 1-hour per calendar week and 40 hours per benefit year 3. Frontloading explicitly permitted	1. One (1) hour for every 30 hours worked 2. No accrual limits 3. Frontloading likely permitted

Leave Usage	
PMLA	ESTA
1. May limit usage to no more than 40 hours of paid medical leave per benefit year 2. May be used in hourly increments unless written employer policy designates otherwise 3. 90-day waiting period for new hires	1. May limit usage to the following: - Large employers (10+ employees): 72 hours of paid sick time per benefit year - Small employers (1-9 employees): 40 hours of paid sick time, plus 32 hours of unpaid sick time per benefit year 2. May be used in smallest increment that payroll system allows, but not greater than hourly increments 3. 90-day waiting period for new hires

Leave Carryover	
PMLA	ESTA
1. May limit carryover to no more than 40-hours from one benefit year to another 2. Employers that frontload paid medical leave not required to allow carryover	1. No carryover limits (only usage limits)

Qualifying Reasons	
PMLA	ESTA
<p>1. Mental or physical illness or injury of employee or employee's family member</p> <p>2. Medical diagnosis or treatment of illness or injury of employee or employee's family member</p> <p>3. Preventative medical care for employee or employee's family member</p> <p>4. Matters arising from employee or employee's family member being a victim of domestic violence or sexual assault</p> <p>5. If employee's place of business is closed due to public health emergency and employee needs care for child</p> <p>6. If employee's child's school or place of care is closed due to public health emergency and employee needs to care for child</p> <p>7. If public official or healthcare provider determines that the health of others may be jeopardized because of employee or employee's family member's exposure to a communicable disease</p>	<p>1. All of the reasons covered under PMLA</p> <p>2. Plus, meetings at child's school or place of care related to child's health or disability, or the effects of domestic violence or sexual assault on child</p>

Family Members	
PMLA	ESTA
<p>1. Child (biological, step, foster, legal ward, in loco parentis)</p> <p>2. Grandchild</p> <p>3. Spouse</p> <p>4. Parent (biological, foster, step, adoptive, legal guardian)</p> <p>5. Grandparent</p> <p>6. Sibling (biological, foster or adopted)</p>	<p>1. All of those covered by PMLA plus:</p> <ul style="list-style-type: none"> - Step-sibling - Child or domestic partner - Domestic partner - Any other individual related by blood or affinity whose close association with employee is equivalent to a family relationship

Supporting Documentation	
PMLA	ESTA
1. May require supporting documentation, but must give employee at least 3-days to provide supporting documentation 2. May not require that documentation explain the details of violence or the employee/family member's medical condition	1. May require supporting documentation be provided in a timely manner only if employee uses more than 3 consecutive days of paid sick time 2. Employer must pay any out-of-pocket costs incurred by employee in securing documentation 3. May not require that documentation explain the nature of the illness or details of violence

Employer Notice	
PMLA	ESTA
1. Display posters in the employer's place of business	1. Poster requirement 2. Plus: - Written notice at hire - Notice and posters must be in English, Spanish, and any other language spoken by 10% of the workforce if LEO has translated the posters and notices into those languages

Recordkeeping	
PMLA	ESTA
1. Must retain records for 1-year	1. Must retain records for 3 years 2. Failure to maintain records creates presumption that the employer violated ESTA

Enforcement	
PMLA	ESTA
1. File a claim with LEO 2. Statute of limitations of 6-months	1. File a claim with LEO, or a civil action in court 2. Statute of limitations of 3-years

Retaliation	
PMLA	ESTA
1. No retaliation provisions	1. Specifically prohibits and defines retaliation 2. Creates a rebuttable presumption of retaliation if an employer takes adverse personnel action against a person within 90-days after that person: <ul style="list-style-type: none"> - Files a complaint with LEO or in court alleging an ESTA violation - Informs any person about an employer's alleged ESTA violation - Cooperates with LEO or another person in the investigation or prosecution of any alleged ESTA violation - Opposes any policy, practice, or act that is prohibited by ESTA - Informs any person of their ESTA rights