

# HOUSE BILL NO. 5492

October 28, 2021, Introduced by Reps. Brabec, Aiyash, Clemente, Pohutsky, Sowerby, Cherry, Sneller, Lasinski, Breen, Hood, Brixie, Kuppa, Cynthia Johnson, Peterson, Haadsma, Cavanagh, LaGrand, Liberati, Rogers, Ellison, Hope, Stone, Bolden and Young and referred to the Committee on Judiciary.

A bill to amend 2018 PA 338, entitled  
"Paid medical leave act,"  
by amending the title and sections 2 and 4 (MCL 408.962 and  
408.964), as amended by 2018 PA 369.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE  
2 An act to require certain employers to provide certain  
3 employees with paid medical leave for personal or family health  
4 needs, as well as purposes related to domestic violence, **stalking**,

1 and sexual assault; to specify the conditions for accruing and  
 2 using paid medical leave; to prescribe powers and duties of certain  
 3 state departments, agencies, and officers; and to provide remedies  
 4 and sanctions.

5 Sec. 2. As used in this act:

6 (a) "Benefit year" means any consecutive 12-month period used  
 7 by an employer to calculate an eligible employee's benefits.

8 (b) "Department" means the department of ~~licensing-labor~~ and  
 9 ~~regulatory affairs.~~ **economic opportunity.**

10 (c) "Director" means the director of the department or the  
 11 director's designee.

12 (d) "Domestic violence" means that term as defined in section  
 13 1 of 1978 PA 389, MCL 400.1501.

14 (e) "Eligible employee" means an individual engaged in service  
 15 to an employer in the business of the employer and from whom an  
 16 employer is required to withhold for federal income tax purposes.  
 17 Eligible employee does not include any of the following:

18 (i) An individual who is exempt from overtime requirements  
 19 under ~~section 13(a)(1) of the fair labor standards act,~~ 29 USC  
 20 213(a)(1).

21 (ii) An individual who is not employed by a public agency, as  
 22 that term is defined in ~~section 3 of the fair labor standards act,~~  
 23 29 USC 203, and who is covered by a collective bargaining agreement  
 24 that is in effect.

25 (iii) An individual employed by the United States government,  
 26 another state, or a political subdivision of another state.

27 (iv) An individual employed by an air carrier as a flight deck  
 28 or cabin crew member that is subject to ~~title II of the railway~~  
 29 ~~labor act,~~ 45 USC 151 to 188.

(v) An employee as described in ~~section 201 of the railway labor act,~~ 45 USC 181.

(vi) An employee as defined in ~~section 1 of the railroad unemployment insurance act,~~ 45 USC 351.

(vii) An individual whose primary work location is not in this state.

(viii) An individual whose minimum hourly wage rate is determined under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b.

(ix) An individual described in section 29(1)(l) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.

(x) An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.

(xi) A variable hour employee as defined in 26 CFR 54.4980H-1.

(xii) An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year.

(f) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs ~~50-1~~ or more individuals. Employer does not include the United States government, another state, or a political subdivision of another state.

(g) "Family member" includes all of the following:

(i) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the eligible employee stands in loco parentis.

(ii) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco

1   parentis when the eligible employee was a minor child.

2       (iii) An individual to whom the eligible employee is legally  
3   married under the laws of any state.

4       (iv) A grandparent.

5       (v) A grandchild.

6       (vi) A biological, foster, or adopted sibling.

7       (h) "Health care provider" means that term as defined in  
8   ~~section 101 of the family and medical leave act,~~ 29 USC 2611.

9       (i) "Paid medical leave" means time off from work that is  
10   provided by an employer to an eligible employee that can be used  
11   for the purposes described in section 4(1).

12       (j) "Sexual assault" means any act that violates section 520b,  
13   520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328,  
14   MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

15       **(k) "Stalking" means that term as defined in section 411h of**  
16   **the Michigan penal code, 1931 PA 328, MCL 750.411h.**

17       Sec. 4. (1) An employer shall allow an eligible employee to  
18   use paid medical leave accrued under section 3 for any of the  
19   following:

20       (a) The eligible employee's mental or physical illness,  
21   injury, or health condition; medical diagnosis, care, or treatment  
22   of the eligible employee's mental or physical illness, injury, or  
23   health condition; or preventative medical care for the eligible  
24   employee.

25       (b) The eligible employee's family member's mental or physical  
26   illness, injury, or health condition; medical diagnosis, care, or  
27   treatment of the eligible employee's family member's mental or  
28   physical illness, injury, or health condition; or preventative  
29   medical care for a family member of the eligible employee.

1 (c) If the eligible employee or the eligible employee's family  
2 member is a victim of domestic violence, **stalking**, or sexual  
3 assault, the medical care or psychological or other counseling for  
4 physical or psychological injury or disability; to obtain services  
5 from a victim services organization; to relocate due to domestic  
6 violence, **stalking**, or sexual assault; to obtain legal services; or  
7 to participate in any civil or criminal proceedings related to or  
8 resulting from the domestic violence, **stalking**, or sexual assault.

9 (d) For closure of the eligible employee's primary workplace  
10 by order of a public official due to a public health emergency; for  
11 an eligible employee's need to care for a child whose school or  
12 place of care has been closed by order of a public official due to  
13 a public health emergency; or if it has been determined by the  
14 health authorities having jurisdiction or by a health care provider  
15 that the eligible employee's or eligible employee's family member's  
16 presence in the community would jeopardize the health of others  
17 because of the eligible employee's or family member's exposure to a  
18 communicable disease, whether or not the eligible employee or  
19 family member has actually contracted the communicable disease.

20 (2) An eligible employee shall, when requesting to use paid  
21 medical leave, comply with his or her employer's usual and  
22 customary notice, procedural, and documentation requirements for  
23 requesting leave. An employer shall give an eligible employee at  
24 least 3 days to provide the employer with documentation. This act  
25 does not prohibit an employer from disciplining or discharging an  
26 eligible employee for failing to comply with the employer's usual  
27 and customary notice, procedural, and documentation requirements  
28 for requesting leave.

29 (3) Paid medical leave must be used in 1-hour increments

1 unless the employer has a different increment policy and the policy  
2 is in writing in an employee handbook or other employee benefits  
3 document.

4 (4) An employer may require an eligible employee who is using  
5 paid medical leave because of domestic violence, **stalking**, or  
6 sexual assault to provide documentation that the paid medical leave  
7 has been used for that purpose. The following types of  
8 documentation are satisfactory for purposes of this subsection:

9 (a) A police report indicating that the eligible employee or  
10 the eligible employee's family member was a victim of domestic  
11 violence, **stalking**, or sexual assault.

12 (b) A signed statement from a victim and witness advocate  
13 affirming that the eligible employee or eligible employee's family  
14 member is receiving services from a victim services organization.

15 (c) A court document indicating that the eligible employee or  
16 eligible employee's family member is involved in legal action  
17 related to domestic violence, **stalking**, or sexual assault.

18 (5) An employer shall not require that the documentation  
19 provided under subsection (4) explain the details of the **domestic**  
20 **violence, stalking, or sexual assault**. An employer shall not  
21 require disclosure of details relating to domestic violence,  
22 **stalking**, or sexual assault or the details of an eligible  
23 employee's or an eligible employee's family member's medical  
24 condition as a condition of providing paid medical leave under this  
25 act. If an employer possesses health information or information  
26 pertaining to domestic violence, **stalking**, or sexual assault about  
27 an eligible employee or eligible employee's family member, the  
28 employer shall treat that information as confidential and shall not  
29 disclose that information except to the affected eligible employee

1 or with the permission of the affected eligible employee.

2 (6) This act does not require an employer to provide paid  
3 medical leave for any purposes other than as described in this  
4 section.