

Michigan Court Voids State's Minimum Wage and Paid Medical Leave Acts, Creating Compliance Limbo

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Citing legislative “sleight of hand,” the Michigan Court of Claims has held that the Michigan legislature violated the state’s Constitution when, in 2018, it adopted and then immediately amended ballot initiatives to increase the state’s minimum wage and to require employer-paid sick leave. *Mothering Justice v. Nessel*, No. 21-000095-MM (July 19, 2022). Therefore, the court held, the current versions of the Improved Workforce Opportunity Wage Act (IWOWA) (the minimum wage law) and the Paid Medical Leave Act are void. As a result, Michigan’s minimum wage immediately may increase to \$12.00 per hour (from its current \$9.87 per hour) and the state’s paid sick leave law may expand substantially.

The Michigan Court of Claims presides over major claims against the State of Michigan and its various agencies.

Background

In the summer of 2018, the Michigan legislature was presented with two ballot initiatives, one to increase the minimum wage and the other to require employers to provide paid sick leave to their employees. Under the Michigan Constitution as interpreted and applied for many decades prior, the legislature had three options for each initiative:

1. Reject it, in which case it would be placed on the November 2018 ballot for the voters to either approve or disapprove;
2. Adopt and enact it without any modifications; or
3. Propose an alternative, which would then be placed on the ballot alongside the initiative, with the option receiving the most votes becoming law.

Instead, after receiving a favorable advisory opinion from then-Michigan Attorney General Bill Schuette regarding the applicable Constitutional provision, the legislature enacted both initiatives and then immediately amended them, revising key provisions in the process. In so doing, the legislature eliminated the ability of the voters to decide on either the original ballot initiatives or the amended versions passed by the legislature.

In response, the original petitioners of the ballot initiatives challenged the legislature’s authority to “adopt and amend” the initiatives in the manner it did.

The Decision

Rejecting the position taken by Attorney General Schuette, the court concluded that Article 2, Section 9 of Michigan’s Constitution does *not* permit the legislature to adopt a proposed law presented by ballot initiative and then substantially amend it within the same legislative session.

In a lengthy opinion, the court analyzed the plain language of Article 2, Section 9; its legislative history; case law applying the constitutional provision since its enactment; and

an attorney general opinion issued contemporaneously with the provision's enactment. That analysis supported the conclusion that, while the legislature could enact the ballot initiatives as presented and then (assuming they were approved by the voters) amend them in a subsequent legislative session, it could not do so within the same session. Allowing such an "adopt and amend" tactic could routinely thwart voter intent, the court of claims concluded. Thus, the court found it necessary to void the amended versions of IWOWA and the Paid Medical Leave Act and ordered reinstatement of the ballot initiatives as originally presented in 2018 and as (briefly) adopted by the legislature.

Comparison of Current Law to Original Ballot Initiatives

Although the State of Michigan immediately filed an appeal of the court's order and a motion to stay its directive to reinstate the ballot initiatives as originally enacted, the current status of Michigan's minimum wage and paid sick leave laws remains in flux. Should the court's order ultimately be upheld, here is how the laws would change:

Minimum Wage

Reinstatement of the original ballot initiative would result in an immediate increase in Michigan's minimum wage from \$9.87 per hour to \$12.00 per hour, and the minimum wage would increase annually to account for inflation. By contrast, under IWOWA, the minimum wage will not reach \$12.00 until at least 2031, and the provision for inflation-based increases does not exist. Moreover, under IWOWA, no minimum wage increase will occur if the unemployment rate exceeded 8.5% for the previous year. The ballot initiative did not include such a limitation.

In addition, under the original ballot initiative, the tip credit for employees would be eliminated by January 1, 2024, with the immediate effect of increasing the minimum cash wage for tipped employees to \$9.60 per hour (*i.e.*, 80% of the \$12.00 standard minimum wage). Beginning January 1, 2023, the minimum cash wage would increase to 90% of the inflation-adjusted current minimum wage. By contrast, under IWOWA, the minimum cash wage for tipped employees is set at 38% of the full minimum wage (currently, \$3.75 per hour).

Paid Sick Leave

In its original form, the ballot initiative required most employers to provide paid sick leave to employees. While the amount of leave varied between small employers (those with fewer than 10 employees) and large employers, the current Paid Medical Leave Act exempts employers with fewer than 50 employees from providing paid sick leave.

Moreover, the original ballot initiative required 72 hours of paid sick leave for large employers and 40 hours of paid leave and 32 hours of unpaid leave for small employers, with employees accruing one hour of sick leave for every 30 hours worked. By contrast, the current Paid Medical Leave Act only requires covered employers to provide 40 hours of paid sick time, with employees accruing an hour of sick leave for every 35 hours worked.

Finally, the current Paid Medical Leave Act eliminated a provision in the original ballot initiative that prohibits employers from taking retaliatory personnel actions against employees. If the court's decision is upheld and is not overturned by appropriate legislative action, that retaliation prohibition provision would go into effect.

The Takeaway

Absent a stay pending appeal or further legislative action, the decision in *Mothering Justice v. Nessel* could result in significant revisions to Michigan law – and employer pay and leave obligations – practically overnight. Employers who are not already paying their non-exempt employees (both tipped and non-tipped) wages, or who are not already providing sick leave, that would satisfy the greater requirements in the original ballot initiatives must be prepared to act promptly to comply with these requirements should they be upheld.

Jackson Lewis attorneys will continue to monitor and report on any further developments regarding this decision. If you have any questions about the decision, or any other wage and hour or leave law issue, please contact the Jackson Lewis attorney(s) with whom you regularly work.

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