

Order Issuing Changes to Michigan Minimum Wage and Paid Sick Leave Law Stayed Until February 2023

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On July 19, 2022, the Michigan Court of Claims held that, in 2018, the state legislature violated the Michigan Constitution when it enacted, and within the same legislative session amended, two ballot initiatives, one to raise the minimum wage and the other to require employers to provide paid sick leave. Now, citing public concerns over the ability of employers and the relevant state agencies to immediately implement the changes required by its decision, the court has granted a stay of its order until February 20, 2023.

Absent a further stay by the Michigan Court of Appeals or the Michigan Supreme Court, or absent further – albeit unlikely – action by the legislature, the Improved Workforce Opportunity Wage Act (IWOWA) (the minimum wage law) and the Paid Medical Leave Act (PMLA) will remain in effect until February 20, 2023. Thereafter, the ballot initiatives as they originally existed in 2018 will become law, and with them the corresponding minimum wage and paid sick leave obligations.

Background

When presented with the ballot initiatives in 2018, the Michigan legislature could have rejected them, in which case they would have been placed on the November 2018 ballot for the voters to either approve or disapprove; they could have been adopted and enacted without modification; or the legislature could have proposed alternatives, which would then be placed on the ballot alongside the initiative(s), with the option receiving the most votes becoming law. Undisputedly, if it had enacted one or both of the initiatives, the legislature could have amended them in a subsequent legislative session, but it instead enacted both initiatives and then immediately amended them. On July 19, the Court of Claims held, in *Mothering Justice v. Nessel*, No. 21-000095-MM, that this “adopt and amend” action was unconstitutional. As a result, the court voided the amended laws adopted by the legislature and ordered reinstatement of the ballot initiatives as originally presented in 2018.

(For further details on the events leading to the Court of Claims decision, see our article, [Michigan Court Voids State’s Minimum Wage and Paid Medical Leave Acts, Creating Compliance Limbo.](#))

What This Means for Employers

Absent further judicial or legislative intervention, on February 20, 2023, the following will take effect:

Minimum Wage

- The standard minimum wage will increase from its current \$9.87 per hour to at least \$12.00 per hour. Because the 2018 ballot initiative would have increased the standard

minimum wage to \$12.00 effective January 1, 2022, that amount may simultaneously be increased in February 2023 due to an inflation-based provision in the initiative. Moreover, if the unemployment rate is below 8.5% in late 2022, an interim increase to \$10.10 per hour likely will occur on January 1, 2023, as set forth in IWOWA.

- The minimum wage for tipped employees will increase from its current \$3.75 per hour (38% of standard minimum wage) to at least \$9.60 – and possibly \$10.80 – per hour. Under the ballot initiative, the tipped employee minimum wage was set to increase to 80% of standard minimum wage on January 1, 2022; to 90% of standard minimum wage on January 1, 2023; and to be eliminated altogether beginning in 2024.

Presumably, the Wage and Hour Division of the Michigan Department of Labor and Economic Opportunity (LEO) will address what, if any, adjustments to the standard minimum wage will occur to account for inflation and what tipped employee minimum wage will apply as of February 20, 2023.

Paid Sick Leave

Under the ballot initiative (known as the “Earned Sick Time Act”), nearly all Michigan employers will be required to offer 72 hours of sick leave annually. For large employers (those with at least 10 employees), all 72 hours of leave must be paid. Small employers, on the other hand, must provide at least 40 hours of paid sick leave annually, while the balance of the 72 hours of leave may be unpaid.

In addition, unlike the PMLA, the Earned Sick Time Act includes a provision prohibiting an employer from taking retaliatory action against an employee who uses sick leave.

The Takeaway

Without a further stay or legislative action, employers must be prepared, no later than February 20, 2023, to ensure that they are paying their non-exempt employees (both tipped and non-tipped), and are providing their employees with sick leave, in accordance with the requirements of the ballot initiatives and any forthcoming LEO regulations.

Jackson Lewis attorneys will continue to monitor and report on any further developments on these issues. If you have any questions about the Court of Claims decision, the ballot initiatives, 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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