

(Mothering) Justice Denied: Legislative Amendments to Minimum Wage and Paid Sick Leave Upheld

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The Michigan legislature was within its authority to amend two ballot initiatives in 2018, one to significantly raise the minimum wage and the other to greatly expand the availability of paid sick leave to employees, the Michigan Court of Appeals has held. [*Mothering Justice v. Attorney General*, 2023 Mich. App. LEXIS 625 \(Mich. Ct. App. Jan. 26, 2023\)](#).

In doing so, the Court of Appeals reversed a court of claims decision that would have implemented those initiatives as approved by the voters, beginning in mid-February 2023. Now, the more modest minimum wage increases and paid sick leave changes enacted by the legislature in 2018 will remain in effect.

Background

The court of claims in 2022 held that the state legislature violated the Michigan Constitution when, in 2018, it enacted and, within the same legislative session, amended two ballot initiatives. The first initiative would have significantly raised Michigan's minimum wage, while the second would have expanded the obligations of employers to provide paid sick leave. As a result, the court of claims voided the amended laws adopted by the legislature and ordered reinstatement of the ballot initiatives as originally presented. (For further details on the events leading to the court of claims decision and the decision itself, see our articles, [Michigan Court Voids State's Minimum Wage and Paid Medical Leave Acts, Creating Compliance Limbo; Order Issuing Changes to Michigan Minimum Wage and Paid Sick Leave Law Stayed Until February 2023](#); and [Michigan Minimum Wage and Paid Leave Update: Agency Guidance and the Mothering Justice Appeal](#).)

Court of Appeals Decision

On appeal, the Michigan Court of Appeals reversed the decision of the lower court. First, the Court of Appeals addressed the fact that, unlike the U.S. Constitution, which establishes the specific and limited powers delegated to Congress, the Michigan Constitution provides the state legislature with all legislative authority not expressly prohibited by the state or federal Constitutions. Next, the Court of Appeals thoroughly analyzed the history of the two state constitutional provisions at play in the case: initiatives and referendums.

Initiatives are proposed laws directly submitted by citizens of the state to the legislature, which (within 40 days) must be enacted as proposed or rejected, the court explained. If an initiative is not enacted, it is placed on the ballot of the next general election for the voters to decide. If approved by the voters, the initiative becomes law, cannot be vetoed by the governor, and can be repealed only as provided for in the initiative itself or by three-fourths of the members of each legislative house. A *referendum*, on the other hand, is a challenge by citizens to a law originated and enacted by the legislature itself. If a referendum is properly filed, the law is suspended unless and until approved by a majority of the voters at

the next general election.

Importantly, concluded the Court of Appeals, if the legislature approves and enacts an initiative within 40 days, that initiative *immediately* becomes a law subject to amendment, just as any other law. By contrast, under the constitutional provision, a law subject to referendum cannot be amended within the same legislative session.

The Court of Appeals determined that, in holding the legislature cannot “adopt and amend” a voter initiative within the same legislative session, the court of claims improperly had conflated the differing restrictions on the amendment of initiatives versus referendums. Thus, held the Court of Appeals, nothing in either the U.S. or Michigan Constitutions precluded the actions taken by the legislature in adopting the 2018 voter initiatives as law and then subsequently amending that law within the same legislative session. Accordingly, it ruled the legislature’s actions were constitutional.

The Takeaway

As a result of the Court of Appeals decision, the standard minimum wage of \$10.10 per hour and the tipped employee minimum wage of \$3.84, both of which went into effect on January 1, 2023, will remain in effect until the next scheduled increases in January 2024, as set forth in the 2018 legislative amendments.

In addition, the current Paid Medical Leave Act (PMLA) will remain in place. The PMLA exempts employers with fewer than 50 employees from providing paid sick leave and only requires covered employers to provide a maximum of 40 hours of paid sick time to eligible employees, with eligible employees accruing one hour of sick leave for every 35 hours worked. Moreover, the PMLA eliminated a provision in the voter initiative that would have allowed employees alleging a violation of that act to bring a civil action for appropriate relief, including, but not limited to, payment for unused earned sick time, rehiring or reinstatement, payment of back wages, as well as liquidated damages and attorney’s fees.

Barring an appeal to, and contrary decision by, the Michigan Supreme Court or further action by the legislature, the 2018 legislative amendments will remain in place. Jackson Lewis attorneys will continue to monitor and report on any such appeal or other related developments. In the meantime, please contact a Jackson Lewis attorney if you have any questions.

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