

Michigan Supreme Court Invalidates Legislative Amendments to Minimum Wage, Paid Sick Leave Measures

By Emily M. Petroski & Allan S. Rubin

August 7, 2024

Meet the Authors



Emily M. Petroski

Office Managing Principal and
Office Litigation Manager
248-936-1922
Emily.Petroski@jacksonlewis.com



Allan S. Rubin

Principal
(248) 936-1930
Allan.Rubin@jacksonlewis.com

Related Services

Disability, Leave and Health
Management
Wage and Hour

Michigan employers soon will face a significantly higher minimum wage and more onerous employee sick leave obligations after the Michigan Supreme Court invalidated the Michigan legislature's amendments related to two voter ballot initiatives. *Mothering Justice v. Attorney General and State of Michigan*, No. 165325 (July 31, 2024).

Effective Feb. 21, 2025, the state's minimum wage rate will increase from \$10.33 per hour to a rate that likely will exceed \$12.00 per hour, with some forecasting a minimum wage as high as \$12.50 per hour. The rate employers may pay tipped employees also will increase, from \$3.93 per hour tip credit rate to 48 percent of the new minimum wage (or \$5.76 per hour, assuming a \$12.00 minimum wage). The Supreme Court declined to apply the wage increase retroactively. Employers will not be responsible for payment of back wages that would have been due employees had the legislature not amended the statute.

In addition, nearly all Michigan employers will be required to offer employees 72 hours of sick leave annually. For employers with at least 10 employees, all those hours must be paid. For small employers with fewer than 10 employees, at least 40 of those 72 hours must be paid.

Ballot Initiatives

During the summer of 2018, Michigan voters approved two initiatives for inclusion on the November 2018 election ballot. The "Improved Workforce Opportunity Wage Act" (Wage Act) proposed step increases to the state's minimum wage rate and, after 2022, annual minimum wage increases indexed to inflation. The Wage Act, in stages, also pared back the tip credit employers could take against the minimum wage, for employees who customarily and regularly earn tips. The Wage Act would have eliminated the tip credit this year.

The "Earned Sick Time Act" (ESTA) expanded employee leave rights. More specifically, it provided that employees of a small business (those with less than 10 employees) were entitled to accrue one hour of earned sick time for every 30 hours worked but could not use more than 40 hours of paid earned sick time in a year unless the employee selected a higher limit. If an employee of a small business accrued more than 40 hours of earned sick time in a calendar year, the employee could use up to an additional 32 hours of unpaid earned sick time in that year. Under the ESTA, all other employees accrued a minimum of one hour of paid earned sick time for every 30 hours worked but could not use more than 72 hours of paid earned sick time per year.

In addition, the ESTA prohibited an employer from taking retaliatory action against an employee who used sick leave under the Act and provided that employees could bring a civil action related to any violation.

Legislature Adopts, Amends the Wage Act and ETSA

The ballot initiatives were sent to the Michigan legislature. First, the legislature adopted the ballot initiatives intact. This meant neither would appear on the ballot. Then, within the same legislative session, the legislature significantly amended the measures.

The Amended Wage Act set a lower minimum wage increase (not to exceed \$12.00 per hour until 2030) and left the tip credit in place. The Amended ETSA, renamed the “Paid Medical Leave Act” (PMLA), exempted employers with up to 50 employees, required up to 40 hours of paid sick time each year, with eligible employees accruing one hour of sick leave for every 35 hours worked. The PMLA also eliminated an employee’s ability to file a civil action related to a violation and limited the recoverable damages for any violation.

Litigation

Proponents of the original ballot measure filed a legal challenge to the legislative action. The Michigan Court of Claims held that the legislature deprived voters of the ability to decide on either the original ballot initiatives or the amended versions passed by the legislature and violated the Michigan Constitution. The court voided the amended laws adopted by the legislature and held that the voter-initiated laws as originally presented were to take effect following a 205-day stay of its decision.

Before the stay expired, however, the Michigan Court of Appeals reversed the decision, concluding that nothing in the U.S. or Michigan Constitutions expressly prohibited the legislature’s action. Therefore, the appeals court held the amended initiatives were constitutional, and the amended versions remained in effect.

Supreme Court Decision

On July 31, 2024, the Michigan Supreme Court reversed the Court of Appeals and held that the legislature could not adopt and then amend, in the same legislative session, ballot initiatives raising the state’s minimum wage and expanding paid sick leave. In a 4-3 decision, the divided Court concluded that the “adopt and amend” tactic and the amended versions passed by the legislature were unconstitutional.

Yet the Court found the legislature did not violate the Michigan Constitution when it adopted the original initiatives. Thus, the Court held the ballot proposals originally adopted by the legislature (prior to amendment) must take effect. But, since the original initiatives provided a 205-day transition period between enactment and effective date, the Court likewise granted a 205-day grace period from the date its decision was published for the original ballot measures to take effect. Thus, the original ballot initiatives as adopted by the legislature will take effect *Feb. 21, 2025*, with the minimum wage rate that would have taken effect in 2019, as adjusted for inflation.

The Court also made clear that employers that followed the legislature’s amended measures may not be held liable for having reasonably relied upon assurances that the amended versions of the ballot initiatives were good law. This is because the Court found that “‘injustice might result’ if courts punished employers for following the law as provided on the state’s official websites.”

Next Steps

The Supreme Court chose to implement a gradual phase-in of the minimum wage increases, in keeping with the structure of the original Wage Act. The increases will conform to a

schedule of annual adjustments, but the original minimum wage rates will be adjusted for inflation, as calculated by the state treasurer each year, with rates for the following year announced each November. The Court said this approach “revives the constitutional status quo while accounting for the passage of time.”

The minimum hourly wage rate and tip credit rollback will be adjusted annually as follows:

Date	Minimum Wage	Tip Credit
Feb. 21, 2025	\$10.00 plus inflation adjustment	48% of minimum wage
Feb. 21, 2026	\$10.65 plus inflation adjustment	60% of minimum wage
Feb. 21, 2027	\$11.35 plus inflation adjustment	70% of minimum wage
Feb. 21, 2028	\$12.00 plus inflation adjustment	80% of minimum wage

Beginning Feb. 21, 2029, the state treasurer will calculate the inflation-adjusted minimum wage as set forth in the original ballot initiative and the tip credit will no longer exist.

There is no similar phase-in of the original ESTA. On Feb. 21, 2025, nearly all Michigan employers must comply with the ESTA and offer 72 hours of sick leave annually, with varying paid leave requirements based on employer size. The original ESTA’s anti-retaliation provisions also will take effect. Employees alleging a violation of the ESTA will be able to bring a civil action for appropriate relief, including but not limited to, payment for used earned sick time, rehiring or reinstatement to the employee’s previous job, payment of back wages, and an equal additional amount as liquidated damages, together with reasonable attorney’s fees as the court allows.

Takeaway

The Supreme Court pointed out that the state legislature “may, of course, amend the laws as it sees fit”; it simply cannot do so in the same session at which it adopted the ballot initiatives. Although the original initiatives will take effect in February 2025, the legislature may adopt more measured increases to minimum wage and sick leave entitlements that impose a less onerous burden on Michigan employers.

We will continue to monitor and report on any developments to Michigan minimum wage and sick leave requirements. In the meantime, please contact a Jackson Lewis attorney if you have any questions about how to manage implementation of the impending changes to these laws.

©2024 Jackson Lewis P.C. This material is provided for informational purposes only. It is not intended to constitute legal advice nor does it create a client-lawyer relationship between Jackson Lewis and any recipient. Recipients should consult with counsel before taking any actions based on the information contained within this material. This material may be considered attorney advertising in some jurisdictions. Prior results do not guarantee a similar outcome.

Focused on labor and employment law since 1958, Jackson Lewis P.C.'s 1000+ attorneys located in major cities nationwide consistently identify and respond to new ways workplace law intersects business. We help employers develop proactive strategies, strong policies and business-oriented solutions to cultivate high-functioning workforces that are engaged, stable and diverse, and share our clients' goals to emphasize inclusivity and respect for the contribution of every employee. For more information, visit <https://www.jacksonlewis.com>.