

MICHIGAN EMPLOYERS AVOID STRICT PAID SICK LEAVE LAW AND MINIMUM WAGE HIKE – FOR NOW: 2 STEPS EMPLOYERS SHOULD TAKE

Insights
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The Michigan Court of Appeals just blocked a \$13+ minimum wage and shut down the expanded paid leave law for Michigan workers that was set to take effect next month. The Court of Appeals' January 26 decision ruled that state lawmakers had the authority in 2018 to adopt and amend two ballot initiatives in the same session, giving them the right to take these steps. Yesterday's ruling, which also blocks the impending tip credit law, overturns a lower court decision from summer 2022. However, the Court of Appeals decision will be appealed to the Michigan Supreme Court any day now. So how did we get here and what two steps should employers take while we wait for the state's highest court to have its say?

[Editor's Note: The Michigan Supreme Court overturned the Court of Appeals decision on July 31, 2024. [Read more about the sweeping decision and what it means for employers.](#)]

State Legislature Adopted and Amended Initiatives

Two ballot initiatives – the Improved Workforce Opportunity Act (IWOWA) and the Earned Sick Time Act (ESTA) – secured enough signatures to go on the November 2018 ballot. Instead of letting the initiatives be voted on, however, the Michigan Legislature decided to adopt both initiatives as proposed. The legislature took this approach because, if the ballot initiatives were passed by the voters, they could only be amended or repealed by the voters or by three-fourths of the legislature.

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The ballot initiative version of IWOWA raised the minimum wage to \$12 an hour by 2022 with yearly increases thereafter based on inflation. ESTA provided all Michigan employees with 72 hours of annual leave for numerous types of absences. ESTA gave small businesses – with fewer than 10 employees – a small break by requiring that only the first 40 hours of annual leave be paid. The remainder could be unpaid, whereas larger employers would have to provide paid leave for all 72 hours.

Before either IWOWA or ESTA became effective, however, the Michigan Legislature significantly amended both laws. Among other changes, the amended ESTA:

- Applied only to employers with 50 or more employees;
- Required only 40 hours of annual paid leave;
- Allowed for employers to frontload the leave;
- Removed anti-retaliation provisions; and
- Removed an employee’s right to bring a private civil suit for violations.

The amended ESTA was also renamed the Paid Medical Leave Act (PMLA). As for the amended IWOWA, it stretched out the wage hikes to reach \$12 an hour by 2030 and removed the provision for yearly increases based on inflation, as well as the elimination of the tip credit by 2024.

Court of Appeals Decision

In May 2021, Mothering Justice – an advocacy group for mothers – and certain other plaintiffs filed a lawsuit in the Michigan Court of Claims to invalidate the PMLA and amended IWOWA. The parties in the litigation both filed for summary disposition. On July 19, 2022, [the Court of Claims ruled in Mothering Justice’s favor by holding that Michigan Legislature could not adopt and amend a ballot initiative in the same legislative session](#) because it only had three choices when faced with ballot initiative:

1. Enact them without change prior to the election;
2. Let the voters decide through the ballot box; or
3. Propose an alternative prior to the election and have voters decide on the ballot initiative and the legislature’s

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proposed alternative.

The Court of Claims subsequently ruled that it would delay enforcement of its ruling until February 19, 2023, at which point the voter-initiated versions of IWOWA and ESTA would become enforceable.

The State of Michigan appealed the Court of Claims ruling to the Michigan Court of Appeals and both parties asked for an expedited decision. As such, on January 26, the Michigan Court of Appeals issued its lengthy decision in which it overturned the Court of Claims ruling. The Court of Appeals' decision was very detailed, but the essence of the decision was encapsulated by it holding "there are no limitations with respect to the amendment of initiated laws beyond the initial 40-session day period for legislative action, the Legislature is free to amend laws adopted through the initiative process during the same legislative session."

Mothering Justice's counsel has already stated it plans to appeal the Court of Appeals decision to the state Supreme Court.

2 Steps Employers Should Take Now

As this saga is not over yet, there are two steps employers can take now while we all wait to see how the Michigan Supreme Court rules:

1. You should ensure that at least one of your paid leave policies complies with the PMLA. Any employer with 50 or more employees *nationwide* is considered to be a covered employer under the PMLA. If covered, you should consider working with your employment counsel to ensure you all FLSA nonexempt employees who work on average 25 or more hours per week are either provided with 40 hours of paid leave for PMLA-covered reasons or the ability to accrue up to 40 hours of paid leave.
2. If you have not already done so, you may want to examine your leave policies and work with your employment counsel to develop an ESTA-compliant policy. If the Michigan Supreme Court reinstates the Court of Claims ruling or otherwise holds the "adopt-and-amend" strategy was unlawful, there is a good chance you will only have days to implement an ESTA-compliant policy.

Note: Employers in the hospitality industry who utilize the tip credit should also be prepared for what steps they will take to remain competitive if the original IWOWA goes into effect with a \$13.03 minimum wage and \$11.73 tipped employee minimum wage (or worse if the Michigan Supreme Court issues such a ruling in 2024).

Finally, employers should keep their ears open not only for what happens with the Michigan Supreme Court, but also on what the Democrat-controlled Michigan Legislature decides to do in response to the Court of Appeals decision. Though the Democrats hold a slim majority, there is a chance they may attempt to pass an employee-friendly paid sick leave law before the Supreme Court issues its ruling.

Conclusion

We will continue to monitor developments in this area and provide updates as warranted, so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Detroit office](#).