

MICHIGAN SUPREME COURT HOLDS EMPLOYERS MUST PAY HIGHER MINIMUM WAGE AND PROVIDE EXPANDED SICK LEAVE RIGHTS: 3 STEPS YOU SHOULD TAKE NOW

Insights
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Big changes are coming for Michigan employers due to a sweeping decision just issued by the state's highest court. Beginning next year, Michigan employers will be subject to new annual minimum wage increases, gradually lose the tip credit, and must provide vastly expanded paid sick leave rights. The Michigan Supreme Court ruled yesterday that state lawmakers unconstitutionally usurped a voter initiative that was slated for the 2018 ballot – leading the court to reinstate the 2018 voter-initiated versions of the state's minimum wage and paid sick leave laws. So how did we get here and what should employers do now? We'll explain everything and give you three steps to prepare.

How Did We Get Here?

In 2018, two ballot initiatives – the Improved Workforce Opportunity Act (IWOWA) and the Earned Sick Time Act (ESTA) – secured enough signatures to go on the November ballot. Instead of letting the initiatives be voted on, however, Michigan lawmakers adopted both initiatives as proposed – and then made major changes to them within the same legislative session. 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took this approach because, if the ballot initiatives were passed by the voters, they could only be amended or repealed by the voters or by three-fourths of the legislature.

Under the **ballot initiative versions**:

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- **IOWA raised the minimum wage to \$12 per 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, except that for small businesses (fewer than 10 employees), only the first 40 hours of annual leave had to be paid (the remainder could be unpaid).

But before either IOWA or ESTA became effective, Michigan lawmakers significantly amended both laws. Among other changes, the **amended ESTA – which was renamed as the Paid Medical Leave Act (PLMA):**

- 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 IOWA** stretched out the wage hikes to reach \$12 per hour by 2030 and removed the provision for yearly increases based on inflation, as well as the elimination of the tipped hourly wage by 2024. Note that employers who use the tipped hourly wage still have to cover the difference between the tipped hourly wage and the minimum wage if the tipped employee’s tips do not make up that difference.

In 2023, [a Michigan appeals court held the legislature’s “adopt-and-amend” tactic was lawful](#). The primary plaintiff to the case, Mothering Justice (an advocacy group for mothers), appealed that ruling to the Michigan Supreme Court.

Michigan Supreme Court Reverses Course

The Michigan Supreme Court **ruled** yesterday that the legislature’s adopt-and-amend tactic was unconstitutional because it “violated the people’s initiative rights.” The court ruled that the amended versions of ESTA and IOWA were void, and that the original versions of ESTA and IOWA would take effect on February 21, 2025. Notably, the court held employers could **not** be held liable for their reasonable reliance on the legislature’s unconstitutional acts.

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Due to the passage of time, the court ordered a modified annual schedule for the wage hikes and phase-out of the tip credit under IWOWA, as well as adjustments for inflation by the state treasurer. Here's the new IWOWA schedule:

Date	Minimum Wage (NOTE: These numbers have <u>not</u> yet been adjusted for inflation.)	Tipped Hourly Wage Percentage of the Minimum Wage
February 21, 2025	\$10.00	48%
February 21, 2026	\$10.65	60%
February 21, 2027	\$11.35	70%
February 21, 2028	\$12.00	80%
February 21, 2029	To be calculated by the state treasurer each year.	90%
February 21, 2030 (and beyond)	To be calculated by the state treasurer each year.	100%

**The Court's opinion omitted the 90% tipped hourly wage year without explanation.*

[Ed. Note: The Michigan Supreme Court clarified its original remedy on September 18, in response to a recent Michigan Attorney General motion for clarification. Notably, the court confirmed the Treasury's interpretation that the amount of inflation to the 2025-2028 minimum wage amounts would be based on the amount of inflation between January 1, 2019, and July 31, 2024. The court ordered the Treasury to publish those amounts by November 1. According to the AG's underlying motion, the 2025-2028 minimum wage amounts according to the Treasury would be: \$12.48 in 2025, \$13.29 in 2026, \$14.16 in 2027 and \$14.97 in 2028.]

3 Steps Employers of All Sizes Should Consider Taking Now

Be aware that an employee or former employee can bring a private civil claim for any ESTA violations for damages incurred by the violation, as well as liquidated damages, back pay, reinstatement, and attorney fees. Since there are no more appeals on this matter and no word (yet) that lawmakers will pass a new law impacting yesterday's ruling, you should consider preparing now by taking the following three steps:

1. Examine your leave policies and work with your employment counsel to ensure your policies comply with ESTA once it takes effect next year. Some, but not all, of the key compliance items include:

- the **leave accrual rate** will be at least **one hour of leave for every 30 hours worked** (PMLA required one hour of leave for every 35 hours worked);
- the **yearly accrual allowance** will be at least **72 hours** (was 40 under PMLA);
- the **leave increment** is the smaller of one hour or the smallest increment used by your payroll system; and
- **all employees**, including exempt employees, will be **covered** regardless of hours worked.

2. Determine if you have a no-fault attendance policy, as it likely runs afoul of ESTA, which states that "an employer's absence control policy shall not treat earned sick time pursuant to [ESTA] as an absence that may lead to or result in retaliatory personnel action."

3. Stay tuned for the state treasurer's announcement on what the **inflation-adjusted minimum wage (and tipped hourly wage)** will be in the above-noted schedule.

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, any attorney in [our Detroit office](#), or any attorney in our [Wage and Hour Practice Group](#).