

# CLIENT ALERTS

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## Michigan Supreme Court Delivers a Blow to Employers: Reinstates Earned Sick Time Act & Improved Workforce Opportunity Wage Act

### Client Alert

7.31.2024

The Michigan Supreme Court issued its long-awaited opinion in *Mothering Justice v. Attorney General*. As a result of this decision, Michigan employers will be required to pay a higher minimum wage and provide more paid time off. And small employers are no longer immune from these requirements. Employers will have until February 21, 2025, to comply with the Improved Workforce Opportunity Wage Act (the Wage Act) and Earned Sick Time Act (ESTA).

### What happened?

As discussed in prior Butzel Alerts, the Michigan Legislature passed the Wage Act and ESTA that was set to be on the ballot in 2018. In the same session, the Legislature amended the laws with a far less restrictive version (this has come to be known the “adopt-and-amend” strategy). Last July, the Court of Claims ruled that the amended laws are invalid, and the original statutes are in effect. The Court of Appeals later reversed the Court of Claims decision. The decision was subsequently appealed to the Michigan Supreme Court.

The Michigan Supreme Court reversed the Court of Appeals, reinstating the Wage Act and ESTA originally adopted by the Legislature in 2018. According to the Michigan Supreme Court, the Michigan Constitution (specifically Article 2, § 9) only provides three options for the Legislature upon receiving a valid voter initiative: 1) enact the petition without change or amendment, 2) reject the proposed petition, which would result in the proposed petition appearing on the ballot in the next general election, and 3) reject the proposed petition and propose a modified version that will appear on the ballot of the next general election alongside the original petition. Because the Legislature’s “adopt and amend” strategy is not one of those three options, it is unconstitutional. To remedy the Legislature’s

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unconstitutional adopt and amend, the Michigan Supreme Court has ordered the original versions of the bills to take effect.

### **What's next?**

The Wage Act and ESTA will take effect 205 days from the Michigan Supreme Court opinion. Starting on February 21, 2025, employers will have to comply with the original Wage Act and ESTA, with some modifications by the Michigan Supreme Court.

### **Improved Work Force Opportunity Wage Act**

The original Wage Act included phased increases in the minimum wage for tipped and non-tipped employees from 2019 to 2022. Following those phased increases, the Michigan state treasurer was to increase the minimum wage every year based upon inflation. In recognition of the fact that the previous phased schedule has already passed, the Michigan Supreme Court ordered that the phased increase start in 2025 and continue through 2028. However, the Supreme Court is requiring that the minimum wage in the Improved Work Force Opportunity Wage Act be adjusted for inflation. The new phased increases is as follows:

- February 21, 2025: The minimum hourly wage will be \$10.00 plus the state treasurer's inflation adjustment. The tip credit will be 48% of minimum wage.
- February 21, 2026: The minimum hourly wage will be \$10.65 plus the state treasurer's inflation adjustment. The tip credit will be 60% of minimum wage.
- February 21, 2027: The minimum hourly wage will be \$11.35 plus the state treasurer's inflation adjustment. The tip credit will be 70% of minimum wage.
- February 21, 2028: The minimum hourly wage will be \$12.00 plus the state treasurer's inflation adjustment. The tip credit will be 80% of minimum wage.
- February 21, 2029: The state treasurer shall calculate the inflation-adjusted minimum wage as set forth in 2018 PA 337, § 4(2). The tip credit will no longer exist.

### **Earned Sick Time Act**

Under the ESTA, employees will earn a minimum of one hour of sick time for every 30 hours worked. All full-time and part-time employees will be entitled to 72 hours of sick time in a year (unless the employer selects a higher limit). However, employees of "small businesses," (employers with fewer than 10 employees) will only be required to provide up to 40 hours of paid sick time and 32 hours of unpaid sick time each year (unless the employer selects a higher limit). Carryover will also be mandated. Earned sick time will carry over from year to year up to the annual maximums. Similar to the current Paid Medical Leave Act, an employer's paid leave policies that provide leave in at least the same amounts required by the act will be considered compliant with the ESTA.

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Importantly, the ESTA prohibits employers from “retaliating” against an employee for engaging in activity protected by the Act. Importantly, there is a rebuttable presumption that an employer violated the Act if it takes any adverse personnel action against an employee within 90 days after the employee engages in protected activity. Read broadly, this may create potential liability for employers who need to terminate employees within 90 days of their use of a sick day which may conflict with many no-fault attendance policies.

Butzel’s Labor and Employment Team stands ready to answer all your Wage Act and ESTA questions in light of the Michigan Supreme Court’s recent decision in *Mothering Justice v. Attorney General*. Contact the authors of this article or your Butzel Labor and Employment attorney for further guidance as you amend your policies to comply with the Wage Act and ESTA in advance of the February 21, 2025, deadline.

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