

Publications

Michigan Supreme Court Reinstates Expansive Paid Sick Leave and Minimum Wage Laws

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The closely watched legal battle over the Michigan Wage Act and the Earned Sick Time Act concluded on July 31, 2024, leaving employers in a tough spot. In a 4-3 decision in *Mothering Justice v. Attorney General*, the Michigan Supreme Court held that the legislature unconstitutionally violated the people's initiative rights by amending the Wage Act and the Earned Sick Time Act prior to enacting them. The decision punctuates a five-year dispute over these initiatives and revives significant changes to employers' wage and hour obligations under Michigan law.

Background

The Wage Act and Earned Sick Time Act were originally adopted by the Michigan Legislature in 2018 in response to citizen-initiated legislation. Among other things, these initiatives raised the minimum wage to \$12.00 an hour, phased out the tip credit, and created new, expansive sick leave obligations for employers. Prior to enactment, however, the legislature amended the initiatives in a way that removed their defining features. For example, the legislature reduced the minimum wage increase from \$12 to \$10.10 (for 2022) and eliminated the tip credit phase-out. Likewise, the legislature exempted employers with fewer than 50 employees from the sick leave mandate, lowered the number of sick time hours from 72 to 40, and eliminated the prohibition on taking retaliatory personnel actions against employees.

In 2021, policy advocacy groups challenged the constitutionality of the legislature's decision to "adopt and amend" the initiatives, which eventually made its way to the Michigan Supreme Court. Ultimately, the Michigan Supreme Court held that the legislature's amendments were unconstitutional and returned the initiatives to their original form.

What Comes Next?

For employers, one of the most important elements of the decision lies in the remedies. Recognizing that retroactive enforcement of the original Wage Act and Earned Sick Time Act would be unjust to

employers who relied upon the amended laws, the Court took a practical approach to fashioning the following remedies:

1. **Effective Date** - The Wage Act and Earned Sick Time Act go into effect February 21, 2025.
2. **Limitation on Liability** - Employers cannot be held liable for their reasonable reliance upon the state government’s assurances that the Amended Wage Act and the Amended Earned Sick Time Act were good law.
3. **Wages, Tip Credit, and Inflation** – Minimum wage increases will be linked to the same annual schedule as originally proposed but set into the future. In other words, February 21, 2025, will be treated as if it were January 1, 2019, for purposes of setting the minimum wage. However, the state treasurer is required to set a new wage scale by November 1 of each year that accounts for inflation between 2018 and 2024. The schedule for the minimum hourly wage and tip credit is as follows:

Date

Minimum Wage

Tip Credit

February 21, 2025

\$10.00 + inflationary adjustment

48% of minimum wage

February 21, 2026

\$10.65 + inflationary adjustment

60% of minimum wage

February 21, 2027

\$11.35 + inflationary adjustment

70% of minimum wage

February 21, 2028

\$12.00 + inflationary adjustment

80% of minimum wage

February 21, 2029

Minimum Wage Rate in 2028 + inflationary adjustment

No tip credit

Employers also must review, and likely revise, their Michigan paid sick leave policies to comply with the new law's requirements. For example, nearly all employees (full-time, part-time, seasonal) will accrue 1 hour of paid sick leave for every 30 hours worked, up to 72 hours annually. For employees of small employers (those with 10 or fewer employees), they may accrue up to 40 hours of paid sick leave and 32 hours of unpaid sick leave.

The Sick Time Act further limits how and when employers may request documentation to verify the use of paid sick leave and requires the employer to pay all out-of-pocket costs the employee incurs in obtaining that documentation. Further, the law contains a rebuttable presumption that an employer has retaliated against an employee if it takes adverse action within 90 days after the employee engages in activity protected by the law. Employees may bring a civil action against their employer within three years after a violation occurs.

The decision creates a host of issues for Michigan employers which will require time and attention to navigate. The Court's decision may not be the end of the story, however. At the end of its opinion, the Court noted that the legislature "may, of course, amend the laws as it sees fit." Whether the legislature does so remains to be seen. In the interim, employers should remain engaged with legal counsel in the coming months to ensure wage and hour compliance throughout the phasing period. Contact your Vorys lawyer if you have questions about the impact this decision will have on your Michigan operations.