

Michigan Employers May Soon Face Increased Minimum Wage, Expanded Sick Leave Requirements

JULY 29, 2022

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A Michigan court recently held that the current versions of the state's minimum wage and paid sick leave statutes are unconstitutional due to legislative foul play, immediately voiding the existing laws. *Mothering Justice v. Nessel*, No. 21-000095-MM (July 19, 2022). Now, absent a stay pending appeal or further legislative action, the original form of the laws—which had a far broader scope—will take effect, leaving most employers' current policies noncompliant.

Background

In 2018, facing dual ballot initiatives regarding minimum wage and paid sick leave, the Michigan legislature quickly enacted the proposed legislation in order to maintain control over the process. Before the legislation took effect, the legislature approved amendments that significantly revised key provisions.

The amendment to the minimum wage law delayed the increase to \$12-per-hour from 2022 to 2030, removed additional inflation-based increases, and eliminated provisions regarding tipped employees.

With respect to paid sick leave, the amendments created an exemption for employers of fewer than 50 employees, excluded FLSA exempt employees, reduced the rate of accrual, reduced the annual leave requirement from 72 hours to 40 hours for large employers, added a frontloading option, narrowed the permissible reasons for leave, and eliminated an antiretaliation provision.

The Legal Challenge

After a group of employee advocates filed suit challenging this “adopt and amend” strategy, the Michigan Court of Claims ruled that the legislature's conduct violated the plain language of Michigan's constitution and intentionally undermined the intent of the People of Michigan. The court voided the amendments, allowing the original ballot initiatives to take effect.

A motion to stay the decision has been filed and a hearing on the motion is scheduled for August 2, 2022. Unless a stay is granted, the original form of the ballot initiatives will take effect as soon as August 9, 2022 [according to Michigan's Wage & Hour Division](#). Of course, the original decision may be overturned on appeal and the legislature may take further action.

Implications

If the original ballot initiatives become law, minimum wage in Michigan will immediately rise to \$12 per hour. Beginning in 2023, the minimum wage will increase based on the rate of inflation unless the unemployment rate is greater than 8.5 percent. Likewise, paid sick leave benefits will be

available to nearly all employees working in the state. Moreover, employer policies will have to allow accrual of paid sick leave at a rate of one hour for every 30 hours worked, up to 72 hours per year, and frontloading will no longer be permitted.

Employers in Michigan should review their existing wage rates and sick leave policies and begin planning for compliance with original form of these ballot initiatives.

Benesch will continue to monitor the situation as the appeals process unfolds. For more information, please contact a member of Benesch's [Labor & Employment Practice Group](#).

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