

Michigan Wage and Hour Laws on the Move?

Employers with Michigan employees should remain vigilant to the likelihood of profound changes to the state's wage-and-hour laws, including a new sick leave obligation, an increase in the minimum wage to \$12.00 an hour, and a phase-out of the tipped employee wage classification. Pending the outcome of current litigation, these changes could take effect as soon as February 21, 2023.

On July 19, 2022, the Michigan Court of Claims^[1] in *Mothering Justice v. Nessel* held that the state legislature's amendment of two 2018 ballot initiatives was unconstitutional. The initiatives are the Improved Workforce Opportunity Wage Act (IWOWA) (the minimum wage law) and the Paid Medical Leave Act (PMLA), formerly the Earned Sick Time Act. *Mothering Justice* is currently stayed until February 20, 2023. On August 5, 2022, the Michigan attorney general filed a joint motion for expedited appeal. The Michigan Court of Appeals—and perhaps the state Supreme Court—will decide whether the IWOWA and the PMLA must be enacted as originally submitted to the legislature or as the legislature later amended them.

PMLA

As originally constituted, the PMLA required small employers with fewer than 10 employees to provide one hour of paid sick time for every 30 hours worked, up to a maximum of 40 hours, plus up to an additional 32 hours of unpaid sick time; it allowed employees to use up to 72 hours per year if they had accrued that many hours. For larger employers with more than ten employees, the PMLA mandated one hour of paid sick time for every 30 hours worked and allowed employees to use up to 72 hours per year if they had accrued that many hours. The Michigan legislature, however, amended the bill to entirely exempt employers with fewer than 50 employees, lowered the maximum number of sick time hours that could be used in a year to 40 at larger employers, and repealed an anti-retaliation provision.

IWOWA

The IWOWA originally increased the state's minimum wage to \$12.00 per hour by January 1, 2022, increasing at the rate of inflation thereafter. It also gradually eliminated Michigan's tipped employee classification, requiring employers pay tipped employees 60% of the minimum hourly wage by January 1, 2022; 80% by January 1, 2023; and 100% by January 1, 2024. The Michigan legislature, however, reduced the minimum wage increase from \$12.00 to \$10.10, removed the annual adjustment for inflation, and eliminated phasing out the tip credit.

What Comes Next?

Although the court of claims struck down the Michigan legislature's amendments to the IWOWA and PMLA as unconstitutional, it ordered that "the initiatives adopted by the Legislature...remain in effect." Minimum wage and sick pay can therefore continue to be paid in accordance with existing law while the litigation is resolved. The court of claims recognized the "justified concerns regarding the ability of employers and the relevant state agencies to immediately accommodate the changes," and stayed the effect of its judgment until February 20, 2023. Thus, absent a further stay issued by the court of appeals, a judgment overturning the original decision, or further action from the legislature, the original ballot initiatives will take effect on February 21, 2023. Perkins

Coie will continue to monitor this important issue.

[1] The court of claims is a statewide, limited jurisdiction court that hears all civil actions filed against the state of Michigan and its agencies.

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