

Michigan Court Paves Way for Minimum Wage Increases and Paid Sick Leave

July 29, 2022

UPDATE: The State of Michigan has appealed the Court of Claims decision and sought a stay of the decision pending appeal. On July 29, 2022, the Court of Claims denied the State's request for an indefinite stay pending appeal. Instead, the Court paused the enforcement of its ruling for 205 days, the same amount of time between the enactment of the original initiatives and their effective dates, because of "justified concerns" about employers' ability to comply with the new minimum wage and paid sick leave requirements in an abbreviated timeframe. As a result, if no further stays are granted by the Court of Appeals or Supreme Court, and the decision stands on appeal, the decision will take effect on February 19, 2023.

On July 19, 2022, the Michigan Court of Claims held that two voter-initiated laws that were passed and later amended by the state legislature in 2018 should be restored. If the decision stands, the minimum wage in Michigan will increase to \$12.00 per hour, tipped employees will need to be paid the regular minimum wage by 2024, and employers of all sizes will be required to provide Michigan employees with one hour of paid sick leave per 30 hours worked, up to 72 hours per year.

The 2018 Voter-Initiated Laws

Article 2, Section 9 of Michigan Constitution allows Michigan voters to initiate legislation via petition. If a petition receives enough signatures, then the state legislature may enact the proposed legislation "without change or amendment." If the legislature does not enact the legislation without change or amendment, then the proposed legislation is placed on the ballot in the next general election. If the proposed legislation is approved by the voters, then it cannot be repealed unless 75 percent of the State House of Representatives and the State Senate vote to repeal.

In 2018, two petitions received enough signatures and were sent to the legislature. The first, known as the "Improved Workforce Opportunity Wage Act," raised the minimum wage in Michigan to \$12.00 per hour by 2022, with upward adjustments for inflation each year thereafter, and gradually increased the tipped minimum wage to match the regular minimum wage by 2024. The second, titled the "Earned Sick Time Act," required employers with ten or more employees to provide one hour of paid sick leave for every 30 hours worked up to 72 hours per year and employers with fewer than ten employees to provide up to 40 hours of paid leave and 32 hours of unpaid leave per year.

On September 5, 2018, the legislature adopted both voter-initiated laws without change or amendment. As a result, they were not placed on the 2018 general election ballot.

The December 2018 Amendments

After the 2018 election, but during the same legislative session, the legislature amended the voter-initiated laws by simple majority, and then Governor Rick Snyder signed the amendments into law on December 14, 2018.

The amendment to the Improved Workforce Opportunity Wage Act:

1. Reduced the minimum wage increases;
2. Removed the annual adjustment after 2022 based on inflation; and
3. Eliminated the language that gradually increased the minimum wage for tipped employees to match the regular minimum wage by 2024.

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The amendment to the Earned Sick Time Act (renamed the Paid Medical Leave Act):

1. Exempted employers with fewer than 50 employees;
2. Required employers to provide employees one hour of paid leave for every 35 hours, instead of one for every 30 hours;
3. Stated that employers needed to provide up to 40 hours of paid leave per year, rather than up to 72 hours per year; and
4. Repealed a section prohibiting retaliation or discrimination against employees for exercising a right protected under the Act.

The Court of Claims Decision

In a July 19, 2022, decision, the Court of Claims ruled that the legislature's amendments violated the Michigan constitution. It held that "the Legislature has only three options to address voter-initiated legislation within the same legislative section—adopt it, reject it, or propose an alternative." According to the court, once the legislature adopted the two voter-initiated laws, "it could not amend the laws within the same legislative session" because doing so "would effectively thwart the power of the People to initiate laws and then vote on those same laws—a power expressly reserved to the people in the Michigan Constitution." The court ruled that the December 2018 amendments were void, and the voter-initiated legislation adopted by the legislature in September 2018 remains in effect.

What It Means for Michigan Employers

On July 20, 2022, the State of Michigan appealed the Court of Claims decision to the Michigan Court of Appeals and filed a motion to stay the enforcement of its decision while the appeal is pending. A ruling on the motion to stay will impact when, if at all, the Court of Claims ruling goes into effect.

Currently, the Michigan Department of Labor and Economic Opportunity website regarding **minimum wage** and **paid leave** states that the minimum wage is \$9.87 per hour and reflects the requirements in the December 2018 amendments for paid leave. Miller Canfield will continue to monitor this developing situation, and we recommend that employers with Michigan employees do the same.

If you have any questions, please feel free to contact the authors or your Miller Canfield attorney.