

## Michigan Supreme Court Poised to Rule on Constitutionality of Controversial ‘Adopt-and-Amend’ Policy

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### What Will It Mean for Michigan Employers?

July 23, 2024

The Michigan Constitution **allows voters** to initiate ballot measures to change or propose new laws. These citizen initiatives are made outside of the Legislature, enabling ordinary voters to create policy through the ballot. In 2018, two groups— “The One Fair Wage” and “Time to Care”— used ballot measures to propose **two employment laws**: the Improved Workforce Opportunity Wage Act (“IWOWA”), and the **Earned Sick Time Act** (“ESTA”).

Under Michigan’s Constitution, the Legislature was required to either enact these proposals or reject them “without change or amendment within 40 session days from the time such petition is received by the legislature.” Const. 1963, Art. 2, § 9. On September 5, 2018, the Michigan legislature adopted both “without change or amendment.” After the November 2018 election, however, the Legislature adopted **substantial amendments** to both the IWOWA and the ESTA. A summary of the original proposed versions of these states and the later amendments are described **here**.

In 2021, a group of citizen advocacy groups sued the State of Michigan and the Attorney General. The plaintiffs argued the Legislature’s “adopt and amend” maneuver was unconstitutional, as it circumvented the voters’ ability to create policy through ballot initiatives.

In July 2022, the Michigan Court of Claims struck down as unconstitutional the adopt-and-amend strategy as inconsistent with the Constitution’s plain language. According to the court, the Legislature could either enact the law, reject the law, or propose an alternative, but it could not adopt a proposed law, and then in the same legislative session, amend the law it had just adopted. *Mothering Justice v. AG Nessel*, 2022 WL 17548484 (July 19, 2022).

On January 26, 2023, the Michigan Court of Appeals reversed. *Mothering Justice v. AG Nessel*, 345 Mich. App. 282 (2023). The appellate court found that the Legislature could adopt and then amend a law within the same session, because that course of action is not explicitly prohibited by the state constitution.

The case is now before the Michigan Supreme Court where the current session ends July 31, 2024. If the Michigan Supreme Court reverses the Court of Appeals and strikes down the adopt-and-amend strategy, its decision will have significant implications for employers, as the minimum wage could increase substantially, and new paid sick leave requirements could be imposed.

Miller Canfield will provide an update upon the Michigan Supreme Court handing down its decision. If you have any questions or concerns about the impact of the Michigan Supreme Court decision, please do not hesitate to contact the authors of this article.