





EY Payroll NewsFlash

Workforce Tax Services

*Tax. Benefits. Human Resources.
Working together with you.*



 Contact us for more information

 Join us on LinkedIn

Vol.23, 077
September 28, 2022

Michigan court holds that the state legislature's changes in 2018 to the state's paid sick pay leave and minimum wage laws were unconstitutional

Summary

- ▶ The Michigan Court of Claims ruled that the removal of ballot initiatives for enhanced paid leave benefits and an increase in the minimum wage was unconstitutional.
- ▶ The court agreed to stay its ruling until February 19, 2023.
- ▶ Employers can continue to comply as-is for now until further guidance is received from the courts.

On July 19, 2022, Michigan Court of Claims Judge Douglas B. Shapiro [found](#) that changes made in December 2018 (under an “adopt and amend” strategy) to state legislation enacted in September 2018 to take voter initiatives off the 2018 ballot were unconstitutional. Note, however, that Judge Shapiro [agreed](#) on July 29, 2022, to stay the ruling until February 19, 2023, allowing employers time to institute the changes provided for under the ruling. It is also expected that the ruling and subsequent stay will be appealed. (*Michigan Department of Labor and Economic Opportunity news [release](#); Michigan Chamber of Commerce news releases, [7-21-2022](#) and [7-29-2022](#).*)

These actions mean that employers can continue as-is for now and do not have to make any significant changes until further guidance is received from the courts.

State legislation enacted provisions that would have been voted on during the November 2018 ballot

The [Michigan Constitution](#) provides that state legislators have 40 days following the certification of a ballot initiative to either pass the provisions of the initiative or reject the initiative and allow it to be placed on the ballot for voter approval. The original legislation passed on September 5, 2018 ([PA 337](#), *the Improved Workforce Opportunity Act*, and [PA 338](#), *Paid Medical Leave Act*) effectively took voter initiatives providing for a minimum wage increase and paid sick leave off the November 6, 2018 ballot.

The subsequent December 2018 legislation slowed down the increase to Michigan's minimum wage (2018 SB [1171](#)/PA 368) and increased the threshold at which employers are required to provide paid sick leave to employees, while lowering the number of hours of sick leave required per year (2018 SB [1175](#)/PA 369).

In his December 14, 2018 news [release](#), Governor Rick Snyder said: "The two bills I signed today strike a good balance between the initial proposals and the original legislation as drafted. They address a number of difficulties for job providers while still ensuring paid medical leave benefits and increased minimum-wage incomes for many Michiganders."

Original paid sick leave initiative

The paid sick leave [initiative](#) that would have gone to voters had it not been taken off the ballot would have required employers of 10 or more employees to allow employees to accrue one hour of paid sick leave per 30 hours worked up to a limit of 72 hours per year. Employers of fewer than 10 employees would have been required to allow employees to accrue up to 40 hours of paid, and 32 hours of unpaid, sick leave each year.

Original minimum wage increase initiative

The minimum wage increase [initiative](#) that would have gone to voters had it not been taken off the ballot would have increased the state minimum wage to \$10 per hour, effective January 1, 2019; \$10.65, effective January 1, 2020; \$11.35 per hour, effective January 1, 2021; and \$12.00 per hour, effective January 1, 2022. Each year thereafter the minimum wage would have been calculated based on the state's cost-of-living index.

The initiative would also have incrementally eliminated the tip credit from the law by 2024, requiring that tipped employees be paid at the same minimum wage as other employees.

Paid sick leave under SB 1175

Under SB 1175 (PA 369), employers of 50 or more employees must allow eligible hourly employees to accrue one hour of paid sick leave for every 35 hours worked, up to a maximum of 40 hours per year, and allow the employee to carry over up to 40 hours of accrued sick leave to the next year. The term "eligible employee" excludes employees who worked an average of less than 25 hours per week during the previous calendar year and temporary employees hired for work that lasts 25 weeks or less. The bill was effective March 29, 2019. Current employees were allowed to immediately begin accruing and using paid medical leave upon the effective date of the Act, while new employees were required to wait 90 days to begin accruing.

Go [here](#) for more information on Michigan's Paid Medical Leave Act.

Minimum-wage increase under SB 1171

Under SB 1171 (PA 368), Michigan's state minimum wage increased from \$9.25 per hour to \$9.45 per hour, effective March 29, 2019. The state minimum wage increased to \$9.65, effective January 1, 2020 and \$9.87, effective January 1, 2022. As long as the state unemployment rate does not equal 8.5% or greater for the calendar year preceding the calendar year of the next yearly increase, the minimum rate will increase to \$10.33 for 2023; \$10.56 for 2024; \$10.80 for 2025; \$11.04 for 2026; \$11.29 for 2027; \$11.54 for 2028; \$11.79 for 2029; and \$12.05 for 2030. (*Michigan Department of Labor & Economic Opportunity, Bureau of Employment Relations, Wage and Hour Division, minimum wage [pamphlet](#).*)

Employers of tipped employees must continue to pay at a minimum wage of at least 38% of the minimum wage in effect for the year. Tips plus the lower tipped-employee minimum wage must bring the employee's wage up to at least the full minimum wage per hour.

Ernst & Young LLP insights

It remains to be seen if Michigan employers will need to change their current procedures for paying wages and providing paid sick leave in early 2023.

Contact us for more information

Workforce Tax Services - Employment Tax Advisory Services

Kristie Lowery
kristie.lowery@ey.com

Ken Hausser
Kenneth.hausser@ey.com

Debera Salam
debera.salam@ey.com

The information contained herein is general in nature and is not intended, and should not be construed, as legal, accounting or tax advice or opinion provided by Ernst & Young LLP to the reader. The reader is also cautioned that this material may not be applicable to, or suitable for, the reader's specific circumstances or needs, and may require consideration of non-tax and other tax factors if any action is to be contemplated. The reader should contact his or her Ernst and Young LLP or other tax professional prior to taking any action based upon this information. Ernst & Young LLP assumes no obligation to inform the reader of any changes in tax laws or other factors that could affect the information contained herein. Copyright 2022. Ernst & Young LLP. All rights reserved. No part of this document may be reproduced, retransmitted or otherwise redistributed in any form or by any means, electronic or mechanical, including by photocopying, facsimile transmission, recording, rekeying, or using any information storage and retrieval system, without written permission from Ernst & Young LLP.