

Michigan Minimum Wage and Paid Leave Update: Agency Guidance and the *Mothering Justice* Appeal

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The Michigan Department of Labor and Economic Opportunity (LEO) has provided guidance on the upcoming changes to the state's minimum wage rates in light of the Michigan Court of Claims decision in *Mothering Justice v. Nessel*, No. 21-000095-MM (July 19, 2022).

In *Mothering Justice*, the Court of Claims held that the state legislature violated the Michigan Constitution in 2018 when it enacted, and within the same legislative session amended, two ballot initiatives, one to raise the minimum wage and the other to require employers to provide paid sick leave. As a result, the Court of Claims voided the amended laws adopted by the legislature and ordered reinstatement of the ballot initiatives as originally presented in 2018. (For further details on the events leading to the Court of Claims decision and the decision itself, see our articles, [Michigan Court Voids State's Minimum Wage and Paid Medical Leave Acts, Creating Compliance Limbo](#) and [Order Issuing Changes to Michigan Minimum Wage and Paid Sick Leave Law Stayed Until February 2023.](#))

Agency Minimum Wage Guidance

On December 5, 2022, in its [online guidance](#), the LEO announced that, effective January 1, 2023, the standard minimum wage will increase to \$10.10 per hour and the minimum wage for tipped employees will increase to \$3.84. These rate increases were set forth in the 2018 amendments enacted by the legislature and, because the Court of Claims stayed enforcement of its decision until February 19, 2023, these rates will go into effect regardless of whether the Court of Claims decision is upheld or overturned.

The LEO further announced that if the Court of Claims decision *stands* and the 2018 amendments are overturned, the standard and tipped employee minimum wage rates will increase again, to \$13.03 and \$11.73, respectively, on February 20, 2023.

Notably, the current tipped employee minimum wage is set at 38% of the standard minimum wage. However, under the 2018 ballot initiatives, the Michigan tipped minimum wage was set to increase to 80% of the standard minimum wage on January 1, 2022; to 90% of the standard minimum wage on January 1, 2023; and to be eliminated altogether on January 1, 2024. Thus, if the Court of Claims decision is upheld, the minimum wage for tipped employees will more than *triple* within the first two months of 2023 and will equal the standard rate less than a year later.

If, on the other hand, the Court of Claims decision is *overturned* and the 2018 legislative amendments are upheld, then the \$10.10 standard minimum wage and \$3.84 tipped employee minimum wage will remain in place throughout 2023 and will increase again — considerably more modestly — in January 2024, in accordance with the tiered structure set forth in the 2018 amendments.

The Appeal

On December 13, 2022, the Michigan Court of Appeals heard oral arguments in the appeal of *Mothering Justice*. Questioning by the judges suggested that at least two of the three entertained serious concerns about the validity of the underlying Court of Claims decision. Attorneys for both sides asked that the Court of Appeals opinion be published, that it be given immediate effect, and that the Court's decision be issued by February 1, 2023, *i.e.*, three weeks before the stay established by the Court of Claims is set to end. However, the court did not commit to any of these requests and Jackson Lewis cannot predict the eventual timing or outcome of the decision.

Paid Leave Provisions Also at Issue

In addition to the impact the Court of Appeals decision will have on the state's minimum wage rates, the 2018 ballot initiatives also required most employers to provide paid sick leave to employees. While the amount of leave varied between small employers (those with fewer than 10 employees) and large employers, the current Paid Medical Leave Act — which would remain in place if the Court of Claims decision is overturned — exempts employers with fewer than 50 employees from providing paid sick leave.

Moreover, the original ballot initiative required 72 hours of paid sick leave for large employers and 40 hours of paid leave and 32 hours of unpaid leave for small employers, with employees accruing one hour of sick leave for every 30 hours worked. By contrast, the current Paid Medical Leave Act only requires covered employers to provide 40 hours of paid sick time, with employees accruing an hour of sick leave for every 35 hours worked.

Finally, the current Paid Medical Leave Act eliminated a provision in the original ballot initiative that prohibits employers from taking retaliatory personnel actions against employees. If the Court of Claims decision is overturned, that provision, depending on the effective date of the Court of Appeals decision, will no longer exist or will never go into effect.

Jackson Lewis attorneys will continue to monitor and report on the appeal in *Mothering Justice* and any related events. In the meantime, please contact a Jackson Lewis attorney if you have any questions.

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