



Michigan Wage Law Update

Minimum Wage, Tipped Credit & Medical Leave Changes Heading Toward Employers


Presented by
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Today's Presenters



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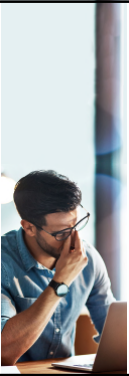
Introduction

- On July 31, the Michigan Supreme Court reinstated higher minimum wage and sick time laws.
- The new wage rates will go into effect on Feb. 21, 2025.



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How did we get here?

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Michigan Constitution Framework

- The Michigan Constitution allows people to bring an initiative forward which can become new law.
- This allows the people to maintain right to initiate legislation.
- The constitution reserves the initiative power to the people and limits the legislature's role with respect to initiative to the powers expressly conferred to the Legislature.




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Two Proposed Initiatives in 2018

When an initiative is brought the Legislature has only three options:

1. First, it can adopt the original initiative as is.
2. Second, it can reject the initiative, and the initiative goes on the upcoming ballot.
3. Third, it can reject or amend portions of the initiative, and the new and original version of the initiative is on the upcoming ballot.



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Adopt-and-Amend

- Here, the Legislature adopted the initiatives as proposed, and then later amended them **AFTER** the election in 2018.
- This effectively pushed back the timetable of enforcement of various things under the acts, which included the minimum wage.



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The Case at Hand



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Adopt-and-Amend Challenge

- An action was brought in the state's court of claims against Michigan Attorney General Dana Nessel, in her official capacity, challenging the Legislature's use of adopt-and-amend.



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MSC Holding

On July 31, 2024, the Michigan Supreme Court held:

- “This decision to adopt the initiatives and then later amend them in the same legislative session violated the peoples’ constitutionally guaranteed right to propose and enact laws through the initiative process.”
- The proposed 2018 initiatives are to become effective as they were originally proposed and adopted as of Feb. 21, 2025.



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The Wage Act



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3 Key Takeaways for Michigan Employers

1. The original initiative wage rates are effective with adjustments for inflation.
2. The wage rates are effective Feb. 21, 2025.
3. Employers are not liable for violations until Feb. 21, 2025.



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Raising the Minimum Wage Schedule

- Starting Feb. 21, 2025, the minimum wage will increase yearly through 2029.
 - This will be determined by the schedule increase plus the state treasurer's inflation adjustment rate.
- The tip credit will also go from 48% on Feb. 21, 2025 and continue to rise.
 - Will rise yearly respectively to 60%, 70%, 80%, and then cease to exist in 2029.



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Earned Sick Time Act



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EST Act Supplants Paid Medical Leave Act

- Big changes to the coverage of “employers” and “employees”
- All employers are covered, regardless of size, whereas the former PMLA applied only to companies with 50 or more employees.
- All employees are entitled to sick leave, regardless of whether they are part-time, temporary, exempt or non-exempt. “Employee” means an individual engaged in service to an employer in the business of the employer (only carveout: employee of the U.S. government).



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EST Act Supplants Paid Medical Leave Act

- Changes to both usage and accrual rules:
 - Employees accrue one hour of earned sick time **for every 30 hours worked.**
 - Employees may use up to 72 hours of earned sick time per year, versus 40 hours per year under the PMLA.
 - For large employers (those with 10 or more employees), all 72 hours must be paid. For employers with less than 10 employees, only 40 hours must be paid.
 - Leave may be used in the **smaller of hourly increments or the smallest increment that the employer’s payroll system uses to account for absences or use of other time.**

Continued

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EST Act Supplants Paid Medical Leave Act

- Changes to rollover/frontloading policies:
 - All earned sick time rolls over to the next year, subject to the usage cap.
 - For example, employee can roll over 72 hours from 2025 into 2026 and continue to accrue.
 - No “cap” on how much leave can be *accrued*.
 - But, can only *use* 72 hours of paid leave.
 - “Frontloading” time does not negate the rollover provision.

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EST Act Supplants Paid Medical Leave Act

- Documentation processes have changed:
 - Employers may request documentation to substantiate the need for earned sick leave only after the absence is for three or more consecutive days.
 - Workplace posters need to be updated, and employers must provide a notice of rights to new hires and current employees.
- The EST Act provides employees with a private right of action against an employer who interferes with or retaliates because of use of earned sick time.
 - 3-year statute of limitations period

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EST Supplants Paid Medical Leave Act

- Changes to “Covered Reasons” for use:
 - PMLA and ESTA both cover absences for: employee or covered family member illness, injury, health condition or preventative care; certain absences where the employee or covered family member is a victim of domestic violence or sexual assault; absences due to certain public health emergencies.
 - But, the ESTA *also covers* meetings at the employee’s child’s school or place of care related to the child’s health or disability, or the effects of domestic violence or sexual assault on the child.

Continued



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EST Supplants Paid Medical Leave Act

- Changes to “Covered Family Members:”
 - ESTA adds categories of “domestic partner” and “any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship” to child, parent, spouse, grandparent, grandchild and sibling.



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EST Act Supplants Paid Medical Leave Act

- Changes to use of PTO or Other Paid Time Off for Compliance:
 - PMLA contains language establishing a rebuttable presumption of compliance for employers that provide employees with at least 40 hours of paid leave each benefit year.
 - Under the ESTA, to use a non-sick paid leave or paid time off policy for compliance, the employer must provide other paid leave in at least the same amounts, that may be used for the same purposes and under the same conditions as those called for under the ESTA, and that is accrued at a rate equal to or greater than the rate under the ESTA.

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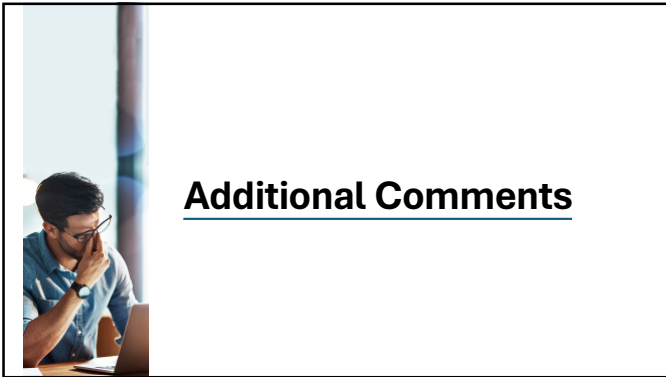
EST Act Supplants Paid Medical Leave Act

- Note: expect to see additional regulations and/or FAQ addressing this point to be published from the Michigan Wage and Hour Division.
- Takeaway for now: using “one bank” is going to be a more burdensome process and potentially rife with documentation and usage concerns.



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Additional Comments



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Implications on PUBLIC Employers


- Public employees fall under the definition of employee under these acts.
- Public Elected officials do not fall in the scope of overtime compensation exception (which gives no less than 1.5x regular rate at which employee is employed for employment in a workweek in excess of 40 hours).
- For public employees that are fire fighters, law enforcement, correctional facilities, see 408.934a(2), overtime may or may not apply on a variety of factors.



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Implications on CBA-covered Employees

- Unless prohibited by CBA, employer may terminate a compensatory plan no less than 60 days after notice to employees




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What About Payout Upon Separation/Termination?

- If an employee has unused compensatory time, it is likely that they must be paid for the compensatory time, and employers cannot deny unemployment based on unused time 408.934a(8)(f).



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FAQs

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Q: How are Exempt Employees from the Federal Overtime Laws Treated?

- A: The Wage Act does not apply to an employee who is exempt from the minimum wage requirements of the Fair Labor Standard Act of 1938, 29 YSC 210 to 219. (§ 408.940(1)(b)).



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Q: When Does an Employee's Time Start Accruing? What About New Hires? Can the Accrued Time for New Hires be Prorated?

- A: Nothing under the Wage Act provides when time must start accruing, and there is nothing on new hires or training, but employees under 20 years-old may have a lower wage for the first 90 days of employment during training. (§ 408.934b of Wage Act).

Additionally, paid medical leave begins to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. (§ 408.963(4)).



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Q: Does Time Carry Over Year to Year? And Is There a Cap for Accrued Time?

- A: Under the wage act, compensatory time caps at 240 hours total. It seems to rollover under the Wage Act from year to year. Under the EST, employees of small businesses (less than 10 people) cannot use more than 40 hours of acquired sick time in a year, otherwise all other employees for other businesses cannot use more than 72 hours a year. The hours accrued per year carries over into the next year, and employers can select a higher amount of hours which can be used.



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Q. Some of Our Staff are Union Members, Their Collective Bargaining Agreement Expires in a Few Years. Do we Need to Renegotiate?

- A: CBAs preempt these act. The EST applies after a CBA expires. If your CBA is effective for several more years, it will apply.

Whether or not you should renegotiate is a case-by-case analysis.



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Q: Is This Act Beyond What we Already Offered for Sick Leave Time?

- A: Importantly, this act includes paid medical leave for oneself and family members, including medical and mental health services. Individual policies should be reviewed to see what the standard was.



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Any Other General Concerns in Light of These Legal Changes?

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Questions?



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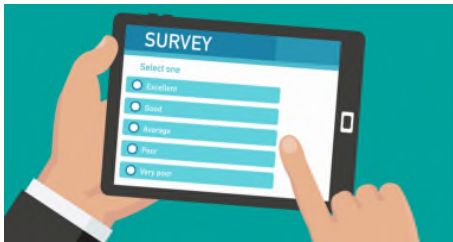


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Post-webinar Survey



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Today's Webinar

Events

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PRACTICE AREAS
Employment Litigation
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When: Tuesday, Aug 20
Time: 11 am to Noon (Eastern)
Cost: Complimentary



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Michigan Employers Can Legally Resist Union Organizing Efforts
Business owners need to know their rights to legally resist union organizing efforts.

Michigan Supreme Court Decision Reinstates Previous Versions of Wage Laws
Michigan Supreme Court decision reinstates previous versions of Michigan's wage laws.

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Thank you!



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