

# 2022 Changes to Michigan's Paid Medical Leave: Back to the Future

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On July 19, 2022, the Michigan Court of Claims reinstated Michigan's original (2018) voter-initiated versions of the *Improved Workforce Opportunity Wage Act* (IWOWA) and the *Earned Sick Time Act* (ESTA). This reversion immediately increases Michigan's minimum wage rate to \$12 per hour and significantly expands the paid sick leave employers must provide to eligible employees.

This recent pivot will likely catch some employers by surprise. While appeals and legal challenges to the ruling are likely, employers may want to pay close attention to the expanded employee rights to paid leave under Michigan law.

## What Happened?



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On July 19, 2022, the Michigan Court of Claims, in *Mothering Justice v. Nessel*, held that the “adopt-and-amend” strategy the Michigan Legislature used to enact an amended version of the Improved Workforce Opportunity Wage Act (2018 Public Act (PA) 368) and the Paid Medical Leave Act (2018 PA 369) (PMLA) was unconstitutional.

Both acts originated as ballot initiatives in the summer of 2018. The IWOWA proposal increased the minimum hourly wage to \$12 by January 1, 2022. The ESTA proposal, which ultimately led to paid sick leave under the PMLA, required most employers to provide Michigan employees with seventy-two hours of annual paid sick leave for many types of absences (illnesses and injuries; care for themselves and family members; domestic violence, sexual assault; and certain business and school closures). Prior to the November 2018 election, the Michigan Legislature [preemptively voted to approve](#) both ballot proposals into law on September 5, 2018. This was the “adopt” portion of the legislature's strategy.

The “amend” strategy occurred in December 2018, before the adopted laws became effective. The legislature significantly revised the adopted initiatives.

**In the ESTA**, the Michigan Legislature legislatively removed or narrowed many provisions of the paid sick leave law. *This narrowed paid sick leave law was renamed the “Paid Medical Leave Act” and is what most Michigan employers implemented into their workforce policies and have been relying on since then.* The legislature's 2018 amendments, among other things, (1) exempted employers with fewer than fifty employees from having to provide paid sick leave, (2) lowered the annual leave entitlement to forty hours, and (3) eliminated a section giving employees the right to sue for retaliation.

**In the IWOWA** the amendments (1) deferred the \$12 per hour minimum wage increase from 2022 to 2030, making the increase more gradual; (2) removed the additional inflation-based annual minimum wage increase beyond \$12 per hour; and



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(3) eliminated wage increases specific to tipped employees.

The amended [ESTA](#) and [IWOWA](#) proposals were then signed into law by outgoing governor Rick Snyder in December 2018, becoming effective March 29, 2019. The revised IWOWA was codified at MCL 408.931 *et seq.* and the PMLA at 408.961 *et seq.* Later, the *Mothering Justice* lawsuit was filed challenging the “adopt-and-amend” process.

In his decision this week, Michigan Court of Claims Judge Douglas B. Shapiro ruled that Article 2 § 9 of the Constitution of the State of Michigan prohibits the “adopt-and-amend” strategy used in 2018 because it “effectively thwarted the intent of the People and denied them the opportunity to vote on whether they preferred the voter-initiated proposal or the Legislature’s suggested modifications.” In his opinion, Judge Shapiro explained that the state constitution limits the Michigan Legislature’s options when faced with ballot initiatives. The legislature’s only options are to: (1) enact the ballot proposal into law without change prior to the election, (2) await the voters’ decision on the proposal at the ballot box, or (3) propose an alternative prior to the election and have voters vote on both the ballot initiative and the legislature’s proposed alternative. If voters were to approve both, the proposal with the most votes would prevail and become law.

The impact on Michigan employers of the court’s invalidating the “adopt-and-amend” strategy in this case is significant. The December 2018 legislative amendments (codified as IWOWA and PMLA) are nullified and the original legislation in September 2018 (adopting the ballot initiatives) is now law.

As of the printing of this article, a motion seeking a stay of Judge Shapiro’s July 19 decision has been filed, but no decision rendered. An appeal of the decision is also expected. Unless and until a stay is granted, the initial ballot initiatives, as adopted, are valid and may be enforced as law as early as August 9, 2022.

### **Key Takeaways: What Employers Need to Know About the Reinstated Law**

Employers may want to examine their current leave policies for Michigan employees and assess any necessary modifications needed to comply with the expanded paid sick leave (and other) provisions of the original legislation.

Here is a recap of the most notable provisions in the original law:

*Earned Sick Time Act (predecessor to the Paid Medical Leave Act)*

• *Public and private employers and all employees.*

Except for the federal government and its employees, the ESTA would require paid sick leave for most public and private employees in Michigan. The PMLA, on the other hand, contains a number of exceptions to the definition of eligible employees, including those who are exempt from overtime under the Fair Labor Standards Act, seasonal employees, and temporary employees.

• *No small employer exemption.*

The ESTA applies to **ALL** Michigan employers with at least one employee, except the federal government. This includes small businesses, which are defined as employers with fewer than ten employees. Small businesses were previously excluded as the

PMLA applied to only employers with fifty or more employees. Under the ESTA, small businesses must provide employees up to forty hours of paid sick leave and an additional thirty-two hours of unpaid sick leave time per year.

- *Increased paid sick leave for “large” employers.*

Employees of employers with ten or more employees, considered “large” by the ESTA, would be entitled to accrue and use up to seventy-two hours of paid sick leave per year (up from the PMLA’s forty-hour requirement).

- *Broader application for use.*

In addition to the authorized uses of paid sick leave provided in the PMLA, the ESTA defines “family member” to include someone related by “affinity.” The ESTA does not define this term, which could be interpreted very broadly.

- *Limits on supporting documents.*

Under the ESTA, an employer may not request documentation supporting the qualified need for paid sick leave unless an employee is absent for more than three days. Even then, the documentation that must be provided need not be detailed. For example, documentation signed by a health care professional simply indicating that earned sick time is necessary is reasonable documentation for purposes of a medically related need for leave. The employer is also responsible for the out-of-pocket costs of the employee obtaining any requested documentation.

- *No front loading.*

The ESTA, unlike the PMLA, does not allow employers to front load an employee’s paid sick leave allowance. Instead, employers must allow employees to accrue paid sick leave as they work—potentially creating increased administrative burdens on employers.

- *Greater enforcement mechanisms.*

Employees have a private cause of action for violations of the act, with a three-year statute of limitations. There is no administrative exhaustion requirement, so employees can proceed directly to court and forgo filing a complaint with the state enforcement agency (Michigan’s Department of Licensing and Regulatory Affairs) altogether. A violation of the act could entitle the employee to reinstatement, back wages, liquidated damages (double damages), costs, and attorneys’ fees. A rebuttable presumption of retaliation arises if adverse action is taken against an employee within ninety days of the employee’s use of paid sick leave. In contrast, the PMLA did not recognize a private cause of action.

#### *Improved Workforce Opportunity Wage Act*

- An immediate increase in the minimum hourly wage rate to \$12.

- An adjustment to the minimum wage rate every year, beginning October 2022, and increasing by the rate of inflation, effective January 1 of the succeeding year. This yearly increase is subject to the state’s unemployment rate staying below 8.5 percent for the preceding year.

- An increase in the minimum wage rate for tipped employees to 80 percent of the minimum hourly wage rate for 2022, 90 percent for 2023, and 100 percent for 2024. This means that employers will be required to pay tipped employees an hourly rate of \$9.60 in 2022, in addition to collected gratuities.

Ogletree Deakins' [Detroit \(Metro\) office](#) will continue to monitor developments with respect to Michigan's Improved Workforce Opportunity Wage Act and Earned Sick Time Act and provide updates on the firm's [Leaves of Absence, Michigan](#), and [Wage and Hour](#) blogs as additional information becomes available. Important information for employers also is available via the firm's [webinar](#) and [podcast](#) programs.