

Adopt & Amend

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The Michigan Supreme Court's “Adopt and Amend Decision”

This was a question of legislative procedure wherein the Michigan Supreme Court decided that the 2018 Minimum Wage and Paid Sick Leave law changes were not constitutional. The decision was 5-3 and came down along party lines.

Effective Date

February 21, 2025, with additional changes each February 21st through 2029.

It is important to note that you do not have to change anything before February 21, 2025. But you should prepare.

3 Big Changes

A series of increases in the regular minimum wage (currently \$10.33/hour)

A phase out of the tipped wage credit (currently 38% of minimum wage)

A specific and complex Paid Sick Leave benefit

Minimum Wage and Tipped Credit

The law the legislature changed away from in 2018 originally set the following schedule:

January 1, 2019: Increase to \$10.00 per hour (tipped credit at 48%)

January 1, 2020: Increase to \$10.65 per hour (tipped credit at 60%)

January 1, 2021: Increase to \$11.35 per hour (tipped credit at 70%)

January 1, 2022: Increase to \$12.00 per hour (tipped credit at 80%)

January 1, 2023 and thereafter : Minimum wage increased by CPI (no tipped credit)

The Supreme Court's Decision

The decision in this area is somewhat open to interpretation, so this slide demonstrates how we are reading it. The Wage and Hour Division will have to publish the actual rates once determined.

February 21, 2025: The minimum hourly wage will be \$10.00 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tip credit will be 48% of minimum wage. We estimate that this will be around \$12.50.

February 21, 2026: The minimum hourly wage will be \$10.65 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tip credit will be 60% of minimum wage.

February 21, 2027: The minimum hourly wage will be \$11.35 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tip credit will be 70% of minimum wage.

February 21, 2028: The minimum hourly wage will be \$12.00 plus the state treasurer's inflation adjustment, using July 31, 2024, as the endpoint for that calculation. The tip credit will be 80% of minimum wage.

February 21, 2029 (originally 2023 and after): The state treasurer shall calculate the inflation-adjusted minimum wage as set forth in 2018 PA 337, § 4(2). The tip credit will no longer exist.

Paid Sick Leave

Current Law (before the decision)

Businesses with 50 or more employees must provide paid sick leave of at least 40 hours per year.

Businesses with fewer than 50 employees are exempt from this requirement.

The Change (after February 21, 2024)

Businesses with 10 or more employees must provide employees at least 72 hours of paid sick leave each year, accrued at a rate of 1 hour for every 30 hours worked.

Businesses with fewer than 10 employees must provide paid sick leave of at least 40 hours per year, accrued at a rate of one hour for every 40 hours worked. Note: Small businesses must provide an additional 32 hours of unpaid sick leave matching bigger businesses total sick leave bank.

Paid Sick Leave Continued

The new policies are complex and expansive beyond the hourly benefit required. Here are some key points:

This benefit applies to all employees, including seasonal, part-time and full-time employees. There is confusion on if it also applies to independent contractors and temporary employees.

Employees become eligible for this accrued benefit immediately. There is a waiting period of 90 days before an employee is entitled to use the leave benefit, but you must begin accruing it immediately upon the first hour worked.

While you might be able to count other forms of leave toward this requirement, it will prove difficult because the general leave bank would have to meet all the requirements of this sick leave law. To use a general leave bank toward this requirement, for example, you would have to allow that entire leave bank to be used without notice or supervisor approval.

The paid benefit accrues at a rate of 1 hour per 30 hours worked for businesses with 10 or more employees.

The paid benefit accrues at a rate of 1 hour per 40 hours of work for businesses with fewer than 10 employees. Note that the difference between businesses 10 or more employees and those with under 10 employees would have to be made up with an unpaid leave entitlement up to an additional 32 hours per year.

Accrued leave must carry over year to year with no cap. However, you do not have to allow any more than 72 hours to be used in any year, no matter how much leave time has accumulated.

Paid Sick Leave Continued

You do not have to pay out unused sick leave upon termination of employment.

It is not clear if front end loading 72 hours of sick leave can relieve the business from accruing the benefit week by week.

For exempt employees, employers can set a 40-hour work week assumption for the accrual. For non-exempt employees, hourly accrual records are required. Record must be kept for 3 years.

The paid benefit rate must match the average hourly rate of the pay period immediately preceding the sick leave.

Employers may not require documentation for any leave that is less than 3 consecutive days.

Employers may require documentation for leave beyond 3 consecutive days but cannot limit that documentation beyond a “health care professional.”

Employers must pay for the out-of-pocket cost of getting the documentation if required.

In practice, the ESTA will provide employees with up to 72 hours of no-notice intermittent leave time each year. Employers’ hands will be tied (i.e., no discipline allowed; see “rebuttable presumption”) as it relates to situations where an employee is a “no call, no show” for up to three days.

You must track hours for non-exempt employees – the law requires you to be able to show that you are meeting the statutory minimums for up to 3 years. If you don’t have records and there is a dispute, there is a presumption in the law against employers.

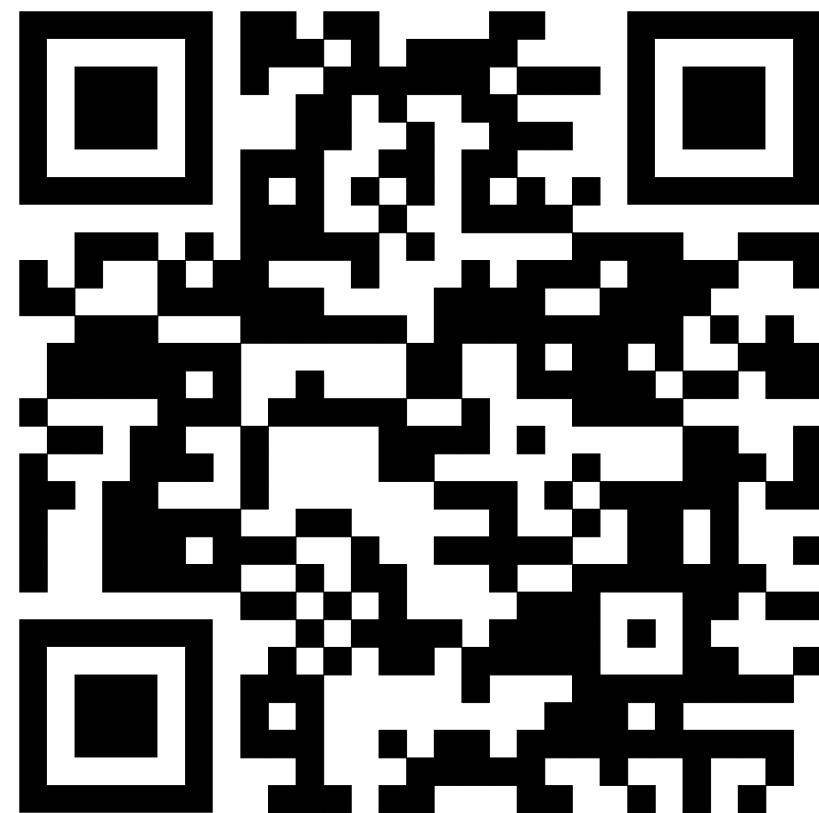
One Bright Spot

The Supreme Court decision does not allow employees to sue for wages or benefits tied to the years when the previous law (now deemed unconstitutional) was in effect.

Take Action Now

By delaying implementation until February 21, 2025, the Supreme Court has hypothetically given the legislature time to act.

Please contact your legislators and the Governor and ask them to moderate these impact!



Questions