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Paid Sick Leave And Minimum Wage: What's Next For Michigan Employers

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On September 5, 2018, Michigan's Republican majority legislature adopted ballot proposals concerning minimum wage and paid sick leave. With that step, legislators removed both proposals from the November general election ballot. This means legislators retain the ability to amend either law with a simple majority vote instead of the three-fourths vote required to amend a ballot initiative if it were passed by voters in November. The Michigan legislature can amend either or both laws before their March 2019 effective dates – either during the lame duck legislative session after the November general election or in the new 2019 session. The minimum wage proposal increases the minimum wage from $9.25 to $10 beginning January 1, 2019, and to $12 per hour by January 1, 2022. It also increases the wage for tipped employees from $3.52 to 100 percent of the minimum wage by 2024. The mandatory paid sick leave proposal gives employees one hour of paid sick leave for every 30 hours worked. All employees (full-time or part-time), temporary workers and independent contractors would be entitled to use 72 hours in a year. However, the impact of this legislation on employers is far broader than providing 72 hours paid hours of sick leave per year to employees. As written, the proposal places severe compliance burdens on employers, including those with paid leave policies currently in place. Among the issues the legislature may consider for amendment in the Earned Sick Time Act include:

- The ability to carry earned sick time from year to year (though the maximum 72 hour use per year still applies).
- Availability of 72 hours of annual sick leave to *exempt employees* – requiring documentation of all hours worked and earned sick time for all exempt employees in addition to temporary employees and independent contractors.
- Use of earned sick time in the smallest increment that the employer's payroll system uses to account for absences for use of other time – meaning all employees will effectively have 72 hours of intermittent leave available to them each year.
- Seven days' notice required for use or, if not possible, as soon as practicable. In practice this will provide employees 72 hours of no-notice call-offs, as the Act specifically provides that the use of earned sick time cannot be counted under an employer's absence control policy.
- Documentation to support use of earned sick time by an employee can

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only be required if the use is for more than three consecutive days.

- Such documentation is limited to a statement by the heath care professional that earned sick time is necessary – nothing more. The Act provides that an employer cannot require disclosure of the details related to the employee or family member's health condition.

- The employer is responsible for payment of any of the employee's out-of-pocket costs associated with providing the medical documentation to support the use of earned sick time.

- The Act recognizes a rebuttable presumption of a violation of the Act if an employer takes an adverse action against an employee within 90 days of, among other actions, opposing any employer action that is prohibited under the Act. Such a rebuttable can arguably apply at any time an employee disagrees with an employer decision to deny use of available unearned sick time as unlawful "interference."

- A full remedy is available to any employee disciplined or discharged in violation of the Act to include reinstatement and all back pay and benefits that are doubled as liquidated damages, plus attorney fees.

The combined effect of all these provisions is that employees will have 72 hours per year of paid time off that they can use intermittently without any practical restriction. The good news is that employers now have an opportunity to engage their legislators to reform the obvious problematic aspects of this legislation before it goes into effect.