

# Mothering Justice

The Michigan Supreme Court finds the Legislature's "Adopt-and-Amend" Strategy Unconstitutional in *Mothering Justice v. Attorney General*

Jacob D. Lynch

Anthony E. Cavalieri



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# What We Will Cover

- History of “Adopt-and-Amend” and *Mothering Justice* Opinion
- Improved Workforce Opportunity Wage Act (IWOWA)
- Earned Sick Time Act (ESTA) (A/K/A Paid Medical Leave Act)
- Fair Labor Standards Act (FLSA) Salary Thresholds
- Quick Hits
  - Federal Trade Commission Ban on Noncompete Agreements (Federal)
  - Third-Party Retaliation under the Elliott-Larsen Civil Rights Act (MI)
  - Pregnant Workers Fairness Act (PWFA)

# The History of “Adopt-and-Amend”

- **September 2018** - Michigan Legislature “adopted” the voter-initiated ballot proposals that called for earned sick time (ESTA) and a \$12 minimum wage by 2022 (IWOWA).
- **November 2018** - General election
- **December 2018** - During *the same legislative session*, the legislature “amended” the voter-initiated portion of the IWOWA by deferring the \$12-per-hour minimum wage increase to 2030 and eliminating wage increases specific to tipped employees. The legislature also “amended” the voter-initiated ESTA and enacted the current version of the Michigan Paid Medical Leave Act (PMLA) that has been in effect since March 2019.

# Mothering Justice v. Attorney General

On July 31, 2024, the Michigan Supreme Court, in *Mothering Justice v. Attorney General*, held that this “adopt-and-amend” approach violated the Michigan Constitution.

In its 4–3 decision, the Michigan Supreme Court stated that this “adopt-and-amend” approach was unconstitutional based on the plain text of the Michigan Constitution, and that while the legislature remained free to amend the voter-initiated laws that it previously adopted in *subsequent* legislative sessions, the “amend” phase could not occur in the *same* legislative session during which the voter-initiated law was first adopted.



# Improved Workforce Opportunity Wage Act

## What does IWOWA require?

- **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 percent of the minimum wage.
- **February 21, 2026:** The minimum hourly wage will be \$10.65 plus the inflation adjustment. The tip credit will be 60 percent of the 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 percent of the minimum wage.
- **February 21, 2028:** The minimum hourly wage will be \$12.00 plus the inflation adjustment. The tip credit will be 80 percent of the minimum wage.
- **February 21, 2029:** The state treasurer shall calculate the inflation-adjusted minimum wage. The tip credit will no longer exist.



# Earned Sick Time Act

## What Employers are Covered?

The ESTA applies to **ALL** Michigan employers with at least one employee, except the federal government.

There is not a complete exemption for small employers—only reduced paid sick time requirements.



# Earned Sick Time Act

## How much leave is required?

**Small Employers (<10):** 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.

**Large Employers (>10):** Employers with ten or more employees are considered “large” employers, and their employees are entitled to accrue and use up to seventy-two hours of *paid* sick leave per year.



# Earned Sick Time Act

## Rules Regarding Sick Time Usage

**Broader Scope of Sick Leave Usage:** ESTA defines “family member” to include someone related by “affinity.”

**Limitations on Requirement to Provide Supporting Documents:** 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 healthcare professional simply indicating that earned sick time is necessary is reasonable documentation for purpose 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.



# Earned Sick Time Act

## **Sick Time Accrual – No Front-loading**

ESTA does not allow employers to front-load an employee's paid sick leave allowance. Employers must allow employees to accrue paid sick leave as they work.

## **Greater Enforcement**

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 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.



# Increased Exempt Employee Salary Threshold

## Exempt Employee Threshold

- \$43,888 per year (\$844 per week), as of July 1, 2024, and
- \$58,656 per year (\$1,128 per week), as of January 1, 2025.
- Must also meet job duties for administrative, executive, or professional

## Highly-compensated Exempt

- \$107,432 (current) to \$132,964 as of July 1, 2024, and
- \$151,164 as of January 1, 2025.
- Less consideration of job duties



# Practical Tips

1

Revise Employee Handbooks to comply

2

Review the new rules with your payroll staff

3

Work with payroll providers to update accrual dates and wage

4

Create documentation policies to comply with recordkeeping

5

Order updated posters

6

Put Tony's phone number in your favorites list



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# Quick Hits



## FTC Ban on Noncompete Agreements (Federal)

- Effective September 4, 2024 (currently blocked by ND of Texas), the Federal Trade Commission (FTC) adopted a final rule banning employers from entering into or enforcing noncompete agreements against workers

## Third-Party Retaliation under the Elliott-Larsen Civil Rights Act (MI)

- On May 10, 2024, In *Miller v Department of Corr*, the Michigan Supreme Court held that employees who support or associate with other employees who make claims covered by the ELCRA are themselves covered.

## Pregnant Workers Fairness Act

- Effective June 27, 2023, employers must make reasonable accommodations for known limitations of pregnant employees, including uncomplicated pregnancies, miscarriages, postpartum depression, and lactation.