

Bodman PLC

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### **Court of Appeals Hears Oral Arguments Requesting Opinion on Court of Claims Decision Invalidating MPLMA; Employers Face Major Changes to PTO Policies if Lower Court Decision Stands**

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As Bodman's Workplace Law Group reported in July of 2022, the Michigan Court of Claims ruled that the Michigan legislature used a constitutionally invalid procedure to amend the Earned Sick Leave Act ("ESA"), a ballot proposal that the legislature passed in 2018. As such, the Court invalidated the amended Act known as the Michigan Paid Medical leave Act ("MPLMA"). See *Mother Justice v. Nessel*, Michigan Court of Claims Docket No. 21-000095-MM. By invalidating the MPLMA, the Court of Claims decision mandates that the ESA takes effect. However, this decision was stayed until February 19, 2023 pending appeal to the Michigan Court of Appeals.

On Tuesday, December 13, the Court of Appeals heard oral arguments in this case. Both parties requested that the Court issue a published decision by February 1 before the stay expires on February 19. Unless the Court of Appeals overturns the lower court's decision, Michigan businesses would be forced to make significant changes to their paid time off (PTO) policies and procedures and wage schedules come February 20, 2023.

Some of the important differences between the acts include:

- **Coverage:** MPLMA covers employers with 50 or more employees; ESA covers employers with one or more employees.
- **Exclusions:** MPLMA has an expansive list of excluded employees, including executive, administrative, and professional FLSA exempt employees; ESA excludes only employees of the federal government.
- **Amount of Leave:** MPLMA - one hour accrued for every 35 hours worked, up to 40 hours of paid time; permits frontloading 40 hours each year in lieu of accrual; ESA - **minimum of 1** hour accrued for every 30 hours worked, up to 72 hours of paid time; only allows accrual method; employers with fewer than ten employees may allow 40 hours of paid leave and 32 hours of unpaid leave.

- **Rollover:** MPLMA - up to 40 hours, unless 40 hours are front-loaded each year; ESA - 72 hours (40 hours of paid time and 32 hours of unpaid time for employers with less than 10 workers).
- **Usage:** MPLMA – employer can set the increment; ESA – must permit usage in increments of 1 hour or less.
- **Claims:** MPLMA – must file with the Michigan Department of Labor (MDOL) within six months; ESA – Rebuttable presumption of a violation where there is an adverse action within 90 days of exercising rights; three year statute of limitations, can be filed with MDOL or can file a private lawsuit; enhanced damage provisions.

If the Court of Appeals upholds the lower court’s decision, an immediate raise in the minimum wage would go into effect, increasing to \$12.00 per hour with annual adjustments based on the consumer price index. The tipped employee minimum wage would also be raised to 90% of the minimum wage in 2023 and 100% of the minimum wage in 2024.

Bodman will continue to monitor this developing case. If you have questions regarding your obligations relating to non-harassment, non-discrimination, or non-retaliation, contact a member of **Bodman’s Workplace Law Group**. Bodman cannot respond to your questions or receive information from you without first clearing potential conflicts with other clients. Thank you for your patience and understanding.

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