

Michigan Governor Signs Paid Medical Leave, Improved Workforce Opportunity Wage Acts

January 4, 2019

The Michigan Legislature, during its lame duck session, approved two bills that were sent to and signed by, Gov. Rick Snyder on Dec. 14 – The Paid Medical Leave Act (PMLA) and the Improved Workforce Opportunity Wage Act (IWOWA).

PMLA requires certain Michigan employers to provide eligible employees with paid time off to address their medical issues or those of a family member and for other reasons including sexual assault or domestic violence. IWOWA slowly increases the state's minimum wage rate through calendar year 2030.

Beginning with the minimum wage rate changes, the increases are to occur each calendar year unless the state's unemployment rate was 8.5 percent or greater during the prior calendar year. Should that happen, the increase will occur in the first calendar year following a calendar year when the unemployment rate is less than 8.5 percent.

Assuming no delays, the following minimum wage rates shall be in effect for the following calendar years: 2019 - \$9.45, 2020 - \$9.65, 2021 - \$9.87, 2022 - \$10.10, 2023 - \$10.33, 2024 - \$10.56, 2025 - \$10.80, 2026 - \$11.04, 2027 - \$11.29, 2028 - \$11.54, 2029 - \$11.79, 2030 - \$12.05.

Tipped employees (those who regularly receive gratuities) remain at 38 percent of the minimum wage rate, provided the tips and wage payments do not fall below the minimum wage rate established by state or federal law. For proponents of the \$15 minimum wage rate, this is clearly disappointing news.

However, employees working for private employers having 50 or more employees may be eligible for paid leave time under the PMLA. An "eligible employee" excludes certain individuals such as those who are exempt under the Fair Labor Standards Act, have a primary work location outside of Michigan, worked less than 25 hours per week in the prior calendar year, or were employed by a "temporary help firm," among others.

Under PMLA, an eligible employee would accrue paid leave at a rate of at least one hour for every 35 hours worked, but the employer is not required to allow an employee to accrue more than an hour in a workweek and it may cap the accrual at 40 hours per benefit year. In the alternative, an employer may grant 40 hours of paid leave at the beginning of a benefit year (and may prorate the amount for an employee hired during the benefit year). A benefit year is any 12-month period used by the employer to

calculate employee benefits (i.e., a rolling year, calendar year, etc.).

Paid leave begins to accrue the latter of the effective date of the law (on the 91st day after the final adjournment of the 2018 legislative session, or on Mar. 21, 2019 if the last day in session is Dec. 20, 2018) or upon the individual's employment. The employee can use the paid leave as it accrues, but the employer may deny use until the 91st day of employment. Leave can be used in one-hour increments, unless the employer uses and has a different increment in a written policy.

An employee may carry over 40 hours from one benefit year to another, but the employer does not have to allow the employee to use more than 40 hours in any benefit year or pay the employee for time not used by the end of the year.

Time off may be used for (1) the employee's own mental or physical illness, injury, or health condition, for diagnosis of the medical condition or its care or treatment, or preventative healthcare, or for these same reasons for a family member of the employee; (2) if the employee or a family member is the victim of sexual assault or domestic violence in order to address medical or psychological issues, to obtain victim services, to relocate, to obtain legal services or to participate in civil or criminal proceedings; or (3) due to the closure of the employee's workplace or child's school or place of care by order of a public official due to a public health emergency, or if health authorities or the healthcare providers determine that, due to exposure to a communicable disease, the presence of the employee or family member in the community might jeopardize the health of others. Only certain family members are included within the definition of that term in the act.

An employee who transfers to a separate division, entity or location but remains employed by the same employer, will retain all leave that was previously accrued. When the employment relationship terminates, the employer is not required to pay out any unused paid leave. If the employee is re-employed, the employer is not required to credit the employee with previously unused time.

The Michigan Department of Licensing and Regulatory Affairs (LARA) is charged with enforcement of the act including investigating complaints by employees. An employer that fails to provide paid medical leave is subject to a \$1,000 and may be ordered to make payment to the employee for the leave that was withheld. LARA must provide a means for appeal of its orders and there are requirements for posting notices and for record retention by employers. There are also rules concerning current collective bargaining agreements and the donation of time from one employee to another.

Employers having 50 or more employees should consult legal counsel for further details concerning this new law and for a policy and procedure that is in compliance.