

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Judges Michael Kelly, Christopher Murray, and Michael Riordan

MOTHERING JUSTICE, MICHIGAN ONE
FAIR WAGE, MICHIGAN TIME TO CARE,
RESTAURANT OPPORTUNITIES CENTER
OF MICHIGAN, JAMES HAWK, AND TIA
MARIE SANDERS,

Plaintiffs-Appellants/Cross-Appellees,

v

DANA NESSEL, in her official capacity as
Attorney General and head of the Department
of Attorney General,

Defendant-Appellee/Cross-Appellant

and,

STATE OF MICHIGAN,

Defendant-Appellee.

_____ /

Supreme Court No. 165325

Court of Appeals No. 362271

Court of Claims
No. 21-000095-MM

**Defendants request a response
no later than September 15,
2024.**

**DEFENDANT ATTORNEY GENERAL ON BEHALF OF DEPARTMENT OF
TREASURY AND DEPARTMENT OF LABOR AND ECONOMIC
OPPORTUNITY AND DEFENDANT STATE OF MICHIGAN’S
JOINT MOTION FOR CLARIFICATION AND
MOTION FOR IMMEDIATE CONSIDERATION**

1. This Court’s July 31, 2024, opinion “adopt[ed] a remedy that links wage increases to the same annual schedule as originally proposed, but set into the future, starting on the effective date of this opinion.” (Op, p 32.) Because “nearly six years have passed since the Legislature adopted the Wage Act and the \$10.00 starting point that the Wage Act envisioned for 2019 is not the same as \$10.00 in 2024,” this Court directed the State Treasurer to implement the Wage Act, 2018 PA

337, but to adjust the Wage Act's minimum hourly wage prescriptions to account for inflation. (Op, pp 32–34.)

2. Respectfully, the Michigan Department of Treasury has read this Court's opinion in earnest and believes there exist ambiguities as to how to interpret and implement this Court's directives in accounting for inflation for the graduated wages for the 2025 through 2028 time period.

3. Given the broad and significant nature of the Wage Act and its delayed implementation, it is crucially important that all public and private actors have clarity as to how the Court's remedy should be implemented.

4. Defendants Michigan Attorney General Dana Nessel on behalf of the Department of Treasury and Department of Labor and Economic Opportunity (LEO) and Defendant State of Michigan therefore move for clarification of this Court's opinion under MCR 7.316 because additional guidance and clarification is essential in order for the State to faithfully implement this Court's dictates and avoid unnecessary litigation. The State respectfully requests that the Court provide the necessary clarity by ruling on this motion **no later than September 15, 2024**.

Relevant Portion of the Court's Opinion and Possible Interpretations

5. The heart of the conflict lies in the Court providing the end date of July 31, 2024, for calculating inflation but not clearly providing the beginning date. Namely, two aspects of this Court's opinion have prompted differences of opinion concerning how to implement the Court's remedy: (1) the Court's citation to both Section 4(1) and 4(2) of the Wage Act when describing how the 2025 through 2028

minimum wages should be adjusted, and (2) the inclusion of a “July 31, 2024 endpoint” for adjusting minimum hourly wage for inflation, but the omission of the appropriate starting point.

6. This leads to several possible options for adjusting the wages for 2025 through 2028:

- a. Option 1 – bring the statutory minimum wages in Section 4(1) current to July 31, 2024, through an inflationary catch-up beginning January 1, 2019;
- b. Option 2 – look back 12-months before July 31, 2024, consistent with the 12-month provision in Section 4(2);
- c. Option 3 – strictly apply Section 4(2) assuming a year-over-year inflation analysis beginning in September 2021;
- d. Option 4 – strictly apply Section 4(2) assuming a 12-month averaging analysis;
- e. Option 5 – Apply a rolling start year for each of the years and enumerated wages set forth in the Wage Act, Section 4(1)a–d, while maintaining a July 31, 2024 end date.

7. Each of these options is explained in more detail below. The differences among these methodologies dramatically impacts the entire State. Treasury believes Option 1 is correct, and Treasury and LEO intend to begin preparing to implement the law using the Option 1 methodology on September 16, 2024, unless this Court directs otherwise.

8. This Court’s analysis illustrates why several methodologies of the starting measure are possible.

9. To begin, this Court’s opinion directs Treasury to calculate the inflation adjusted *rates* for the minimum wages enumerated in the Wage Act, Section 4(1):

In keeping with the statute’s plan to begin accounting for inflation by 2022, we hold that the state treasurer must use this opinion’s publication date to calculate the inflation-adjusted rates for the minimum hourly wage prescriptions provided in the Wage Act. [Op, p 33.]¹

Treasury assumes that the phrase “minimum hourly wage prescriptions provided in the Wage Act” refers to the enumerated statutory wages set forth in Section 4(1)a–d.

10. Next, in footnote 22, this Court states that Treasury should adhere to Section 4(2) in implementing this remedy:

In so doing, the *state treasurer shall follow the procedures set forth in 2018 PA 337, § 4(2)*. In other words, the state treasurer shall publish those amounts “by November 1 of the year it is calculated and shall be effective beginning” 205 days after this opinion’s publication. 2018 PA 337, § 4(2). [*Id.*, p 33 n 22 (emphasis added).]

One could read Footnote 22’s citation to Section 4(2) as directing Treasury first to calculate the inflation rates using the July 31, 2024, end date but also calculate the

¹ It is unclear how Treasury should interpret “use this opinion’s publication date” to calculate the inflation adjustments. For example, as of July 31, 2024, June 2024 is the most recent data available; the July 2024 data is not available until August 2024. Treasury assumes that the Court is asking Treasury to use the data available as of July 31, 2024. This assumption is used throughout this motion.

rates using the procedures outlined in Section 4(2).² That calculation must be done by November 1, 2024, and take effect February 21, 2025.³

11. Then, in the next sentence, the Court directs that these rates be applied to the prescribed or enumerated wages set out in Section 4(1)a–d:

Thereafter, in accordance with the Wage Act’s original design, the state treasurer shall calculate the inflation-adjusted minimum wage as described in 2018 PA 337, § 4(2). Because the minimum wage increases will go into effect in 2025, we will treat the years 2019 to 2022 as the years 2025 to 2028 (plus the necessary inflation adjustment) to reflect the statute’s graduated implementation. The inflation-adjusted minimum wage will commence correspondingly in 2029 (originally 2023) as set forth in 2018 PA 337, § 4(2). [*Id.*, p 33.]

12. Footnote 23, which immediately follows the sentence just quoted, elaborates what the inflation-adjusted rates should be for each of the 2025 through 2028 wages. However, it provides only an end date for the calculation, not a beginning date or elaboration on how Section 4(2) is applied to the inflationary adjustment. The Court appears to apply a single inflation rate to the wages for

² In footnote 21, the Court identifies a CPI (Consumer Price Index) Inflation calculator for CPI for all Urban Consumers (CPI-U). But Section 4(2) of the Wage Act uses the CPI-W. While the differences between these indexes are beyond the scope of this motion, they are different. Indeed, the Bureau of Labor and Statistics explains that the CPI-U and CPI-W are not the same: “Both the CPI-U and C-CPI-U are indexes designed to measure price changes faced by urban consumers, while the CPI-W is designed to measure price changes faced by urban wage earners and clerical workers. Population coverage is the only difference between the CPI-U and CPI-W.” Frequently Asked Questions about the Chained Consumer Price Index for All Urban Consumers (C-CPI-U), < <https://www.bls.gov/cpi/additional-resources/chained-cpi-questions-and-answers.htm> > (accessed August 12, 2024).

³ As the Court appears to instruct that a yearly inflation rate be calculated and published for the prescribed wages in Section 4(1), it is unclear what purpose it serves to publish the inflationary rates in February 2025 in accordance with footnote 22 when the annual inflationary adjustment pursuant to Section 4(2) is not performed until 2029.

2025 through 2028 (formerly 2019 through 2022) as illustrated in the Court’s articulation in footnote 23:

February 21, 2025 (originally 2019): 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. [*Id.*, p 33 n 23 (emphasis added).]

13. Without a clear start date for calculating inflation, the State is left to make assumptions as to how to comply with this Court’s opinion.

Treasury’s Intended Approach – Option 1

14. As noted above, Treasury believes that Option 1 best aligns with what this Court intended. Thus, absent a contrary directive from the Court, Treasury intends to implement the Court’s remedy as follows:

15. For the minimum-wage rates for 2025, 2026, 2027, and 2028, Treasury intends to adjust the minimum wage rates set forth in Section 4(1) of the Wage Act using a value calculated according to the CPI-W increase between January 2019 and June 2024 (the most recent month of data available on July 31, 2024).

Original Year	Original Wage	Adjustment Value⁴	New Year	New Wage
2019	\$10.00	1.24752	2025	\$12.48
2020	\$10.65	1.24752	2026	\$13.29
2021	\$11.35	1.24752	2027	\$14.16
2022	\$12.00	1.24752	2028	\$14.97

⁴ The starting value used is the CPI-W, as prescribed in Section 4(2), for January 2019 and the ending value the CPI-W for June of 2024. The wage values for 2019 to 2022 are all adjusted by the same factor by dividing the June value by the January value:

January 2019 CPI-W: 246.045

June 2024 CPI-W: 306.946

Adjustment Value: 1.24752

16. For 2029, Treasury will calculate the annual minimum wage using the process set forth in Section 4(2) by adjusting the minimum wage used in 2028.

17. Treasury would catch up the minimum wage with inflation by using the CPI-W beginning date of January 2019, and ending June 2024, the most recent data available as of July 31, 2024.

18. Treasury and the Department of Labor and Economic Opportunity (LEO) believe that the Court intended the inflation catch-up in Option 1 as the “appropriate” remedy that this Court judicially fashioned to bring the prescribed wages current and account for inflation from 2019 through 2024. See, e.g., *Id.* (ZAHRA, J., dissenting), p 8 (“While under the Legislature’s chosen policy, expressed through amendments, the minimum wage would be \$10.80 in 2025, it would be around \$13.80 under the initiative version of the law the Legislature rejected and likely around \$12.50 under the revisions to the statute drafted in the majority opinion.”).

Other Approaches – Options 2–5

19. While Treasury believes Option 1 is the proper methodology to be used in implementing the Court’s intended remedy, ambiguities in the opinion provide for other possible methodologies. To assist this Court, Treasury outlines a non-exhaustive list of other possible methodologies below and explains why it rejected them in favor of Option 1.

20. Option 2 would calculate the value according to the CPI-W increase from June 2023 to June 2024, using a 12 month increase from the data available

July 31, 2024—consistent with the “procedures set forth in 2018 PA 337, § 4(2)”¹ (Op, p 32 n 22)—to adjust the wages in Section 4(1) for 2025 through 2028.

21. But Option 2 produces several complications. First, Section 4(2) allows only for a “12-month period” for calculating the inflation adjustment, which seems inconsistent with the Court’s stated goal of accounting for the last “six years” of inflation. (Op, p 33.) Second, Section 4(2) instructs that adjustments for inflation must be made “[e]very October beginning in October, 2022, . . .” But, for the same reasons explained in footnote 1 above, October CPI-W values would not be available until November 2022; only September 2022 values would be available in October 2022. This is reflected in the later portion of Subsection 4(2) providing for the use of the “most recent 12-month period for which data are available.” Third, Section 4(2) directs the State Treasurer to calculate the inflation increase by “multiplying the otherwise applicable minimum wage by the 12-month percentage increase[.]” This phrase is ambiguous, as it could mean either 1) starting with September (or October) 2022 and looking back 12 months or 2) starting with September (or October) 2022 and looking back at the average of the 12 most recent monthly values.

22. Treasury and LEO believe Option 2 was not intended because the Court expressed a concern that “nearly six years have passed since the Legislature adopted the Wage Act and the \$10.00 starting point that the Wage Act envisioned for 2019 is not the same as \$10.00 in 2024.” (*Id.* at 33.) It is unlikely that the Court intended to fashion such a remedy that would result in a minimum wage that is *less*

than what would have been paid under the previous structure rejected by this Court and only factor into inflation from the last year. Treasury and LEO therefore believe that the Court did not intend to adopt a look-back of 12 months from July 31, 2024, for measuring inflation.

23. Options 3 and 4 are plausible interpretations if one assumes that this Court intended a strict application of Section 4(2) of calculating inflation beginning in October 2022 (using September 2022 data) while also using the end date of July 31, 2024. (Again, Treasury does not assume that this Court intended a strict application of Section 4(2).) But Treasury and LEO do not believe that the Court intended either of these options because Section 4(2) was not designed to bring the Wage Act current for inflation; rather, its purpose is to annually account for inflation after the graduated implementation of prescribed wages in Section 4(1)a–d.

24. Option 3 would use the average of the most recent 12-month period available in October 2022 (i.e., October 2021 through September 2022) with an end date of July 31, 2024, consistent with this Court’s opinion.

25. Option 4 is a permutation of Option 2 but uses a 12-month average. Treasury would take the average of the monthly CPI-W values for October 2021 to September 2022 (first 12-month period available) divided by the average of the 12 values of October of 2020 to September of 2021.

26. Finally, Option 5 would roll the inflation adjustment start date forward for each of the enumerated years and wages set forth in Section 4(1)a–d, and using July 31, 2024, as the end date:

Year	Month for Start Date	Month for End Date
2025	January 2019	July 2024
2026	January 2020	July 2024
2027	January 2021	July 2024
2028	January 2022	July 2024

27. Treasury does not believe Option 5 is a proper approach because it results in a smaller inflation calculation that does not accord with this Court’s Opinion that “nearly six years have passed since the Legislature adopted the Wage Act and the \$10.00 starting point that the Wage Act envisioned for 2019 is not the same as \$10.00 in 2024.” (*Id.* at 33.) Indeed, Option 5 would lead to nonsensical results such as causing the minimum wage to *decline*. Such a result is fundamentally contrary to the Wage Act’s provisions. Moreover, Option 5 is inconsistent with footnote 23 of the Court’s opinion, which suggests that the same inflation adjustment value would be applied to each of the four years between 2025 and 2028.

28. Accordingly, Treasury and LEO believe that the proper approach is an inflationary catch up—Option 1—which accounts for inflation from January 2019 through June 2024 (the most recent data available on July 31, 2024), and uses the CPI-W index.

Additional Potential Omissions in the Court’s Opinion

29. Additionally, this filing brings to the Court’s attention three apparent and likely unintended omissions in the portion of this Court’s Opinion that addresses tipped wages.

30. *First*, in Footnote 23, the Court provides that the effective dates for every year’s rate will be on February 21. The Wage Act, however, provides that rates would be effective on January 1 of each year, except for the first year. Treasury requests clarification if minimum wage increases beginning with year 2026 go into effect on January 1 under Section 4, or whether they go into effect on February 21 as stated in footnote 23. Absent clarification, Treasury intends to implement this provision in accordance with the Wage Act, i.e., on January 1 for 2026.

31. *Second*, the Wage Act does not provide for a tip “credit.” Rather, the Wage Act provided for tipped wages to be a specific percentage of the base minimum wage to be increased over time. See Section 4d(2). Thus, the State asks whether the Court’s reference in footnote 23 to “The tip credit will be” should have been to “The rate under Section 4d(2) will be” Absent clarification, LEO intends to implement the “tip credit” as a baseline minimum wage with corresponding rate increases under Section 4d(2).

32. *Third*, this Court’s judicial remedy eliminates the adjustment “beginning January 1, 2023, it shall be 90% of the minimum hourly wage rate established under section 4[,]” 2018 PA 337, Section 4d(2), and instead adjusts minimum wage from 80% to 100%. (Op, p 33 n 23.) Absent clarification, LEO will

assume the Court intended to include the 90% graduated increase for tipped wages and will implement 2018 PA 337, Section 4d(2) (i.e., applying the 90% graduated increase for tipped wages starting in 2029) as written.

Summary

33. In sum, clarification is needed on (1) how to calculate the inflation rate for 2025 through 2028, (2) the meaning of the term “credit,” (3) whether the Court intended to exclude the 90% graduated increase for tipped wages, and (4) the effective dates for each year’s wage increases beginning in 2026.

34. Given the unprecedented situation created by reviving the Wage Act six years later, the State, employers, and employees all need clear guidance from this Court on the proper methodology for calculating the minimum wage.

35. In accordance with this Court’s Opinion and the Wage Act, Treasury must calculate and publish inflation rates in accordance with 2018 PA 337, § 4(2) by November 1, 2024.

36. Unless this Court directs otherwise and in light of the November 1, 2024 deadline for calculating and publishing inflation rates:

- a. It is Treasury’s intent to begin to implement this Court’s opinion in accordance with Option 1 above, using February 21, 2025, as the effective date for 2025 and January 1 as the effective start date for 2026 going forward;
- b. Further, LEO will implement the “tip credit” as a baseline minimum wage and corresponding rate increases under Section 4d(2).
- c. Finally, LEO will implement 2018 PA 337, Section 4d(2) (i.e., applying the 90% graduated increase for tipped wages starting in 2029) as written;

WHEREFORE, for the reasons stated above, Defendants Michigan Attorney General Dana Nessel on behalf of the Department of Treasury and Department of Labor and Economic Opportunity (LEO), and Defendant State of Michigan respectfully seeks this Court's clarification as to implementation of the Court's July 31, 2024 Opinion. Given the impending November 1, 2024, deadline to implement the Court's remedial scheme, the State requests that the Court rule on this motion **no later than September 15, 2024.**

CONCLUSION AND RELIEF REQUESTED

Defendants Michigan Attorney General Dana Nessel on behalf of the Department of Treasury and Department of Labor and Economic Opportunity (LEO), and Defendant State of Michigan respectfully request that this Honorable Court issue an order **no later than September 15, 2024**, clarifying its holding on how the State Treasurer must implement the inflation adjustments.

Respectfully submitted,

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WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rule 7.311(G) because, excluding the part of the document exempted, this **motion for clarification** contains no more than 3,200 words. This document contains 3,141 words.

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