

MINIMUM WAGE LAW OF 1964 (EXCERPT)
Act 154 of 1964

408.384a Compensation for overtime; exceptions; rules; unpaid minimum wages; appropriation; compensatory time in lieu of monetary overtime compensation.

Sec. 4a. (1) Except as otherwise provided in this section, an employee shall receive compensation at not less than 1-1/2 times the regular rate at which the employee is employed for employment in a workweek in excess of 40 hours.

(2) The state or a political subdivision, agency, or instrumentality of the state does not violate subsection (1) with respect to the employment of an employee in fire protection activities or an employee in law enforcement activities, including security personnel in correctional institutions, if any of the following applies:

(a) In a work period of 28 consecutive days, the employee receives for tours of duty, which in the aggregate exceed 216 hours, compensation for those hours in excess of 216 at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(b) For an employee to whom a work period of at least 7 but less than 28 days applies, in the employee's work period the employee receives for tours of duty, which in the aggregate exceed a number of hours which bears the same ratio to the number of consecutive days in the employee's work period as 216 bears to 28 days, compensation for those excess hours at a rate not less than 1-1/2 times the regular rate at which the employee is employed. The employee's regular rate shall be not less than the statutory minimum hourly rate.

(c) If an employee engaged in fire protection activities would receive overtime payments under this act solely as a result of that employee's trading of time with another employee pursuant to a voluntary trading time arrangement, overtime, if any, shall be paid to employees who participate in the trading of time as if the time trade had not occurred. As used in this subdivision, "trading time arrangement" means a practice under which employees of a fire department voluntarily substitute for one another to allow an employee to attend to personal matters, which practice is neither for the convenience of the employer nor because of the employer's operations.

(3) The state or a political subdivision, agency, or instrumentality of the state engaged in the operation of a hospital or an establishment that is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises does not violate subsection (1) if both of the following conditions are met:

(a) Pursuant to a written agreement or written employment policy arrived at between the employer and the employee before performance of the work, a work period of 14 consecutive days is accepted instead of the workweek of 7 consecutive days for purposes of overtime computation.

(b) For the employee's employment in excess of 8 hours in a workday and in excess of 80 hours in the 14-day period, the employee receives compensation at a rate of 1-1/2 times the regular rate, which rate shall be not less than the statutory minimum hourly rate at which the employee is employed.

(4) Subsections (1), (2), and (3) do not apply to any of the following:

(a) An employee employed in a bona fide executive, administrative, or professional capacity, including an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school. However, an employee of a retail or service establishment is not excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in the employee's workweek which the employee devotes to activities not directly or closely related to the performance of executive or administrative activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.

(b) An individual who holds a public elective office.

(c) A political appointee of a person holding public elective office or a political appointee of a public body, if the political appointee described in this subdivision is not covered by a civil service system.

(d) An employee employed by an establishment which is an amusement or recreational establishment, if the establishment does not operate for more than 7 months in a calendar year.

(e) An employee employed in agriculture, including farming in all its branches, which among other things includes: the cultivation and tillage of the soil; dairying; the production, cultivation, growing, and harvesting of agricultural or horticultural commodities; the raising of livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or the processing or preserving of perishable farm products.

(f) An employee who is not subject to the minimum hourly wage provisions of this act.

(5) The director of the department of consumer and industry services shall promulgate rules pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms used in subsection (4).

(6) For purposes of administration and enforcement, an amount owing to an employee that is withheld in violation of this section is unpaid minimum wages under this act.

(7) The legislature shall annually appropriate from the general fund to each political subdivision affected by subsection (2) an amount equal to the difference in direct labor costs before and after January 4, 1979 which arises from any change in existing law resulting from the enactment of subsection (2) and incurred by each such political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate of not less than 1-1/2 hours for each hour of employment for which overtime compensation is required under this act, subject to all of the following:

(a) The employer allows employees a total of at least 10 days of leave per year without loss of pay and provides the compensatory time to the employee only pursuant to either of the following:

(i) Applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other written agreement between the employer and representative of the employee.

(ii) If employees are not represented by a collective bargaining agent or other representative designated by the employee, a plan adopted by the employer and provided in writing to its employees that provides employees with a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary written request to the employer by an individual employee for compensatory time off in lieu of overtime pay before the performance of any overtime assignment.

(b) The employee has not earned compensatory time in excess of the applicable limit prescribed by subdivision (d).

(c) The employee is not required as a condition of employment to accept or request compensatory time. An employer shall not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's rights under this section to request or not request compensatory time off in lieu of payment of overtime compensation for overtime hours, or requiring an employee to use compensatory time. In assigning overtime hours, an employer shall not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates this subsection is subject to a civil fine of not more than \$1,000.00.

(d) An employee may not accrue more than a total of 240 hours of compensatory time. An employer shall do both of the following:

(i) Maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identifies.

(ii) Provide an employee with a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.

(e) Upon the request of an employee who has earned compensatory time, the employer shall, within 30 days following the request, provide monetary compensation for that compensatory time at a rate not less than the regular rate earned by the employee at the time the employee performed the overtime work.

(f) An employee who has earned compensatory time authorized under this subsection shall, upon the voluntary or involuntary termination of employment or upon expiration of this subsection, be paid unused compensatory time at a rate of compensation not less than the regular rate earned by the employee at the time the employee performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time shall not be used by either of the following:

(i) The employer to oppose an employee's application for unemployment compensation under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(ii) The state to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits under the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75.

(g) An employee shall be permitted to use any compensatory time accrued under this subsection for any reason unless use of the compensatory time for the period requested will unduly disrupt the operations of the employer.

(h) Unless prohibited by a collective bargaining agreement, an employer may terminate a compensatory time plan upon not less than 60 days' notice to employees.

(i) As used in this subsection:

(i) "Overtime compensation" means the compensation required under section 4a.

(ii) "Compensatory time" and "compensatory time off" mean hours during which an employee is not

working and for which the employee is compensated in accordance with this subsection in lieu of monetary overtime compensation.

(iii) "Overtime assignment" means an assignment of hours for which overtime compensation is required under this act.

History: Add. 1974, Act 304, Eff. Apr. 1, 1975;—Am. 1975, Act 16, Imd. Eff. Mar. 31, 1975;—Am. 1978, Act 604, Imd. Eff. Jan. 4, 1979;—Am. 1997, Act 2, Imd. Eff. Mar. 12, 1997.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.