

**SENATE BILL NO. 153**

January 27, 1999, Introduced by Senators SIKKEMA, GOSCHKA, ROGERS, BULLARD, BENNETT, MC COTTER, HAMMERSTROM, GOUGEON, JAYE, STEIL, NORTH, SHUGARS and MC MANUS and referred to the Committee on Human Resources, Labor, Senior Citizens and Veterans Affairs.

A bill to amend 1964 PA 154, entitled  
"Minimum wage law of 1964,"  
by amending section 4a (MCL 408.384a).

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

5       (2) The state or a political subdivision, agency, or instru-  
6 mentality of the state ~~shall not be considered to have violated~~  
7 DOES NOT VIOLATE subsection (1) with respect to the employment of  
8 an employee in fire protection activities or an employee in law  
9 enforcement activities, including security personnel in  
10 correctional institutions, if any of the following applies:

1 (a) In a work period of 28 consecutive days, the employee  
2 receives for tours of duty, which in the aggregate exceed 216  
3 hours, compensation for those hours in excess of 216 at a rate  
4 not less than 1-1/2 times the regular rate at which the employee  
5 is employed. ~~—, which~~ THE EMPLOYEE'S REGULAR rate shall be not  
6 less than the statutory minimum hourly rate.

7 (b) ~~In the case of that~~ FOR AN employee to whom a work  
8 period of at least 7 but less than 28 days applies, in the  
9 employee's work period the employee receives for tours of duty,  
10 which in the aggregate exceed a number of hours which bears the  
11 same ratio to the number of consecutive days in the employee's  
12 work period as 216 bears to 28 days, compensation for those hours  
13 in excess of 216 at a rate not less than 1-1/2 times the regular  
14 rate at which the employee is employed. ~~—, which~~ THE EMPLOYEE'S  
15 REGULAR rate shall be not less than the statutory minimum hourly  
16 rate.

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

1       (3) The state or a political subdivision, agency, or  
2 instrumentality of the state engaged in the operation of a hospi-  
3 tal or an establishment ~~which~~ THAT is an institution primarily  
4 engaged in the care of the sick, the aged, or the mentally ill or  
5 defective who reside on the premises ~~shall not be considered to~~  
6 ~~have violated~~ DOES NOT VIOLATE subsection (1) if: pursuant to a  
7 written agreement or written employment policy arrived at between  
8 the employer and the employee before performance of the work, a  
9 work period of 14 consecutive days is accepted instead of the  
10 workweek of 7 consecutive days for purposes of overtime computa-  
11 tion; and if, for the employee's employment in excess of 8 hours  
12 in a workday and in excess of 80 hours in the 14-day period, the  
13 employee receives compensation at a rate of 1-1/2 times the regu-  
14 lar rate, which rate shall be not less than the statutory minimum  
15 hourly rate, at which the employee is employed.

16       (4) Subsections (1), (2), and (3) ~~shall~~ DO not apply to  
17 any of the following:

18       (a) An employee employed in a bona fide executive, adminis-  
19 trative, or professional capacity, including an employee employed  
20 in the capacity of academic administrative personnel or teacher  
21 in an elementary or secondary school. ~~—, except that~~ HOWEVER, an  
22 employee of a retail or service establishment ~~shall~~ IS not ~~be~~  
23 excluded from the definition of employee employed in a bona fide  
24 executive or administrative capacity because of the number of  
25 hours in the employee's workweek which the employee devotes to  
26 activities not directly or closely related to the performance of  
27 executive or administrative activities, if less than 40% of the

1 employee's hours in the workweek are devoted to those  
2 activities.

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

4 (c) A political appointee of a person holding public elec-  
5 tive office or a political appointee of a public body.

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

9 (e) An employee employed in agriculture, including farming  
10 in all its branches, which among other things includes: the cul-  
11 tivation and tillage of the soil; dairying; the production, cul-  
12 tivation, growing, and harvesting of agricultural or horticul-  
13 tural commodities; the raising of livestock, bees, fur-bearing  
14 animals, or poultry; and a practice, including forestry or lum-  
15 bering operations, performed by a farmer or on a farm as an inci-  
16 dent to or in conjunction with farming operations, including  
17 preparation for market, delivery to storage, or delivery to  
18 market or to a carrier for transportation to market or the pro-  
19 cessing or preserving of perishable farm products.

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

22 (5) The director of ~~labor~~ THE DEPARTMENT OF CONSUMER AND  
23 INDUSTRY SERVICES shall promulgate rules pursuant to ~~Act No.~~  
24 ~~306 of the Public Acts of 1969, as amended, being sections 24.201~~  
25 ~~to 24.315 of the Michigan Compiled Laws~~ THE ADMINISTRATIVE PRO-  
26 CEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, to define

1 the terms used in subsection (4). Subsection (4)(c) ~~shall~~ DOES  
2 not apply to a person covered by a civil service system.

3 (6) For purposes of administration and enforcement, an  
4 amount owing to an employee ~~which~~ THAT is withheld in violation  
5 of this section ~~shall be considered to be~~ IS unpaid minimum  
6 wages under this act.

7 (7) The legislature shall annually appropriate from the gen-  
8 eral fund to each political subdivision affected by subsection  
9 (2) an amount equal to the difference in direct labor costs  
10 before and after the effective date of subsection (2) ~~which~~  
11 THAT arises from any change in existing law resulting from the  
12 enactment of subsection (2) and incurred by each such political  
13 subdivision.

14 (8) IN LIEU OF MONETARY OVERTIME COMPENSATION, AN EMPLOYEE  
15 MAY ELECT TO RECEIVE COMPENSATORY OVERTIME OFF AT A RATE OF NOT  
16 LESS THAN 1-1/2 HOURS FOR EACH HOUR OF EMPLOYMENT FOR WHICH OVER-  
17 TIME COMPENSATION IS REQUIRED UNDER THIS ACT, SUBJECT TO ALL OF  
18 THE FOLLOWING:

19 (A) THE ELECTION OF COMPENSATORY TIME OFF IS MADE IN ACCORD-  
20 ANCE WITH ANY OF THE FOLLOWING:

21 (i) A COLLECTIVE BARGAINING AGREEMENT BETWEEN THE EMPLOYER  
22 AND AFFECTED EMPLOYEES OR THEIR COLLECTIVE BARGAINING AGENTS.

23 (ii) A WRITTEN AGREEMENT BETWEEN AN EMPLOYER AND AFFECTED  
24 EMPLOYEES WHO ARE NOT SUBJECT TO A COLLECTIVE BARGAINING AGREE-  
25 MENT, IF THOSE EMPLOYEES KNOWINGLY AND VOLUNTARILY ENTER THE  
26 WRITTEN AGREEMENT BEFORE THEIR PERFORMANCE OF WORK.

1       (iii) FOR EMPLOYEES OF A PUBLIC BODY HIRED BEFORE APRIL 15,  
2 1986, THE ELECTION OF COMPENSATORY TIME OFF IS MADE IN ACCORDANCE  
3 WITH THE REGULAR PRACTICE OF THE PUBLIC BODY AND ITS EMPLOYEES  
4 THAT WAS IN EFFECT ON APRIL 15, 1986.

5       (iv) FOR EMPLOYEES OF A PUBLIC BODY HIRED ON OR AFTER APRIL  
6 15, 1986, THE ELECTION OF COMPENSATORY TIME OFF IS MADE IN  
7 ACCORDANCE WITH SUBPARAGRAPH (i) OR (ii).

8       (B) THE AFFECTED EMPLOYEE PROVIDES WRITTEN AFFIRMATION OF  
9 HIS OR HER ELECTION TO RECEIVE COMPENSATORY TIME IN LIEU OF OVER-  
10 TIME COMPENSATION, AND THAT WRITTEN AFFIRMATION IS PRESERVED AND  
11 MAINTAINED BY THE EMPLOYER.

12       (C) THE EMPLOYEE HAS NOT ACCRUED COMPENSATORY TIME IN EXCESS  
13 OF 240 HOURS, OR 480 HOURS IF HE OR SHE IS EMPLOYED BY A PUBLIC  
14 BODY IN A PUBLIC SAFETY OR EMERGENCY RESPONSE ACTIVITY, OR IN  
15 SEASONAL EMPLOYMENT.

16       (9) AN EMPLOYER SHALL NOT DIRECTLY OR INDIRECTLY INTIMIDATE,  
17 THREATEN, COERCE, OR ATTEMPT TO INTIMIDATE, THREATEN, OR COERCE  
18 AN EMPLOYEE WITH THE PURPOSE OF INTERFERING WITH THE EMPLOYEE'S  
19 RIGHT UNDER THIS SECTION TO ELECT TO ACCEPT OR NOT ACCEPT COMPEN-  
20 SATORY TIME OFF IN LIEU OF PAYMENT OF OVERTIME COMPENSATION FOR  
21 OVERTIME HOURS. AN EMPLOYER SHALL NOT REQUIRE AN EMPLOYEE TO  
22 ELECT COMPENSATORY TIME OFF IN LIEU OF PAYMENT OF OVERTIME COM-  
23 PENSATION FOR OVERTIME HOURS AS A CONDITION OF EMPLOYMENT OR  
24 PROMOTION.