

HOUSE BILL No. 5776

April 20, 2004, Introduced by Rep. Stewart and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1964 PA 154, entitled
"Minimum wage law of 1964,"
by amending section 4a (MCL 408.384a), as amended by 1997 PA 2.

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. **Subject to a**
5 **collective bargaining agreement, an employer shall not require a**
6 **nurse to work more than 12 hours a day or more than 60 hours in**
7 **any 7-day work period except in the event of an emergency. As**
8 **used in this subsection, "nurse" means a licensed practical nurse**
9 **or a registered professional nurse licensed to engage in the**
10 **practice of nursing under part 172 of the public health code,**
11 **1978 PA 368, MCL 333.17201 to 333.17242.**

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

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

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

22 (c) If an employee engaged in fire protection activities
23 would receive overtime payments under this act solely as a result
24 of that employee's trading of time with another employee pursuant
25 to a voluntary trading time arrangement, overtime, if any, shall
26 be paid to employees who participate in the trading of time as if
27 the time trade had not occurred. As used in this subdivision,

1 "trading time arrangement" means a practice under which employees
2 of a fire department voluntarily substitute for one another to
3 allow an employee to attend to personal matters, which practice
4 is neither for the convenience of the employer nor because of the
5 employer's operations.

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

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

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

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

24 (a) An employee employed in a bona fide executive,
25 administrative, or professional capacity, including an employee
26 employed in the capacity of academic administrative personnel or
27 teacher in an elementary or secondary school. However, an

1 employee of a retail or service establishment is not excluded
2 from the definition of employee employed in a bona fide executive
3 or administrative capacity because of the number of hours in the
4 employee's workweek ~~which~~ **that** the employee devotes to
5 activities not directly or closely related to the performance of
6 executive or administrative activities, if less than 40% of the
7 employee's hours in the workweek are devoted to those
8 activities.

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

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

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

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

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

3 (5) The director of the department of ~~consumer and industry~~
4 ~~services~~ **labor and economic growth** shall promulgate rules
5 pursuant to the administrative procedures act of 1969, 1969 PA
6 306, MCL 24.201 to 24.328, to define the terms used in subsection
7 (4).

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

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

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

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

26 (i) Applicable provisions of a collective bargaining
27 agreement, memorandum of understanding, or any other written

1 agreement between the employer and representative of the
2 employee.

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

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

13 (c) The employee is not required as a condition of employment
14 to accept or request compensatory time. An employer shall not
15 directly or indirectly intimidate, threaten, or coerce or attempt
16 to intimidate, threaten, or coerce an employee for the purpose of
17 interfering with the employee's rights under this section to
18 request or not request compensatory time off in lieu of payment
19 of overtime compensation for overtime hours, or requiring an
20 employee to use compensatory time. In assigning overtime hours,
21 an employer shall not discriminate among employees based upon an
22 employee's choice to request or not request compensatory time off
23 in lieu of overtime compensation. An employer who violates this
24 subsection is subject to a civil fine of not more than
25 \$1,000.00.

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

1 following:

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

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

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

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

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

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

1 MCL 421.1 to 421.75.

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

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

9 (i) As used in this subsection:

10 (i) "Overtime compensation" means the compensation required
11 under **this** section. ~~4a.~~

12 (ii) "Compensatory time" and "compensatory time off" mean
13 hours during which an employee is not working and for which the
14 employee is compensated in accordance with this subsection in
15 lieu of monetary overtime compensation.

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