

HOUSE BILL No. 6300

November 4, 2004, Introduced by Reps. Condino, Minore, Lipsey and Hopgood 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.

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

11 (a) In a work period of 28 consecutive days, the employee

1 receives for tours of duty, which in the aggregate exceed 216
2 hours, compensation for those hours in excess of 216 at a rate
3 not less than 1-1/2 times the regular rate at which the employee
4 is employed. The employee's regular rate shall be not less than
5 the statutory minimum hourly rate.

6 (b) For an employee to whom a work period of at least 7 but
7 less than 28 days applies, in the employee's work period the
8 employee receives for tours of duty, which in the aggregate
9 exceed a number of hours which bears the same ratio to the number
10 of consecutive days in the employee's work period as 216 bears to
11 28 days, compensation for those excess hours at a rate not less
12 than 1-1/2 times the regular rate at which the employee is
13 employed. The employee's regular rate shall be not less than the
14 statutory minimum hourly rate.

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

26 (3) The state or a political subdivision, agency, or
27 instrumentality of the state engaged in the operation of a

1 hospital or an establishment that is an institution primarily
2 engaged in the care of the sick, the aged, or the mentally ill or
3 defective who reside on the premises does not violate subsection
4 (1) if both of the following conditions are met:

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

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

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

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

1 activities.— An employee who receives annual wages of less than
2 \$100,000.00 is not considered to be employed in a bona fide
3 executive, administrative, or professional capacity for purposes
4 of exemption from overtime requirements under this subdivision
5 unless the employee supervises 5 or more employees.

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

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

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

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

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

27 (5) The director of the department of ~~consumer and industry~~

1 ~~services~~ **labor and economic growth** shall promulgate rules
2 pursuant to the administrative procedures act of 1969, 1969 PA
3 306, MCL 24.201 to 24.328, to define the terms used in subsection
4 (4).

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

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

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

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

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

27 (ii) If employees are not represented by a collective

1 bargaining agent or other representative designated by the
2 employee, a plan adopted by the employer and provided in writing
3 to its employees that provides employees with a voluntary option
4 to receive compensatory time off for overtime work when there is
5 an express, voluntary written request to the employer by an
6 individual employee for compensatory time off in lieu of overtime
7 pay before the performance of any overtime assignment.

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

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

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

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

1 the pay record identifies.

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

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

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

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

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

26 (g) An employee shall be permitted to use any compensatory
27 time accrued under this subsection for any reason unless use of

1 the compensatory time for the period requested will unduly
2 disrupt the operations of the employer.

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

6 (i) As used in this subsection:

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

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

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