

HOUSE BILL No. 5545

April 19, 2012, Introduced by Rep. McMillin and referred to the Committee on Commerce.

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, an
2 employee shall receive compensation at not less than 1-1/2 times
3 the regular rate at which the employee is employed for employment
4 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, including
9 security personnel in correctional institutions, if any of the

1 following ~~applies~~ **APPLY**:

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

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

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

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

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

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

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

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

1 administrative activities, if less than 40% of the employee's hours
2 in the workweek are devoted to those activities.

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

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

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

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

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

24 (5) The director of the department of ~~consumer and industry~~
25 ~~services~~**LICENSING AND REGULATORY AFFAIRS** shall promulgate rules
26 pursuant to the administrative procedures act of 1969, 1969 PA 306,
27 MCL 24.201 to 24.328, to define the terms used in subsection (4).

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

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

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

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

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

21 (ii) ~~If employees are not represented by a collective~~
22 ~~bargaining agent or other representative designated by the~~
23 ~~employee, a plan adopted by the employer and provided in writing to~~
24 ~~its employees that provides employees with a voluntary option to~~
25 ~~receive compensatory time off for overtime work when there is an AN~~
26 ~~express, voluntary written request to the employer by an individual~~
27 ~~employee for~~ **AGREEMENT BETWEEN THE INDIVIDUAL EMPLOYEE AND THE**

1 **EMPLOYER TO PROVIDE** compensatory time off in lieu of overtime pay.
2 ~~before the performance of any overtime assignment.~~

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

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

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

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

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

26 (e) Upon the request of an employee who has earned
27 compensatory time, the employer shall, within 30 days following the

1 request, provide monetary compensation for ~~that~~ **ALL ACCRUED**
2 compensatory time at ~~a rate not less than the regular rate earned~~
3 ~~by the employee~~ **THE EMPLOYEE'S RATE OF PAY** at the time the employee
4 performed ~~the~~ **UNCOMPENSATED** overtime work.

5 (f) An employee who has earned compensatory time authorized
6 under this subsection shall, upon the voluntary or involuntary
7 termination of employment or upon expiration of this subsection, be
8 paid unused compensatory time at ~~a~~ **THE EMPLOYEE'S** rate of
9 compensation ~~not less than the regular rate earned by the employee~~
10 at the time the employee performed ~~the~~ **UNCOMPENSATED** overtime work.
11 A terminated employee's receipt of or eligibility to receive
12 monetary compensation for earned compensatory time shall not be
13 used by either of the following:

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

17 (ii) The state to deny unemployment compensation or diminish an
18 employee's entitlement to unemployment compensation benefits under
19 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
20 421.1 to 421.75.

21 (g) An employee shall be permitted to use ~~any~~ compensatory
22 time accrued under this subsection for any reason ~~unless~~ **IF** use of
23 the compensatory time ~~for the period requested will~~ **DOES NOT** unduly
24 disrupt the operations of the employer. **IF USE OF COMPENSATORY TIME**
25 **DOES UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER AND IS DENIED,**
26 **THE EMPLOYEE IS ENTITLED TO RECEIVE MONETARY COMPENSATION IN LIEU**
27 **OF COMPENSATORY TIME OFF.**

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

4 (i) As used in this subsection:

5 (i) "Overtime compensation" means the compensation required
6 under **THIS** section. ~~4a.~~

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

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