

Act No. 368  
Public Acts of 2018  
Approved by the Governor  
December 13, 2018  
Filed with the Secretary of State  
December 14, 2018

EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Senator Hildenbrand

# **ENROLLED SENATE BILL No. 1171**

AN ACT to amend 2018 PA 337, entitled “An initiation of legislation to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2014 PA 138,” by amending sections 3, 4, 4a, 4d, 10, and 15 (MCL 408.933, 408.934, 408.934a, 408.934d, 408.940, and 408.945).

*The People of the State of Michigan enact:*

Sec. 3. An employer shall not pay any employee at a rate that is less than prescribed in this act.

Sec. 4. (1) Subject to the exceptions specified in this act, the minimum hourly wage rate is:

- (a) Before September 1, 2014, \$7.40.
- (b) Beginning September 1, 2014, \$8.15.
- (c) Beginning January 1, 2016, \$8.50.
- (d) Beginning January 1, 2017, \$8.90.
- (e) Beginning January 1, 2018, \$9.25.
- (f) In calendar year 2019, or a subsequent calendar year as described in subsection (2), \$9.45.
- (g) In calendar year 2020, or a subsequent calendar year as described in subsection (2), \$9.65.
- (h) In calendar year 2021, or a subsequent calendar year as described in subsection (2), \$9.87.
- (i) In calendar year 2022, or a subsequent calendar year as described in subsection (2), \$10.10.
- (j) In calendar year 2023, or a subsequent calendar year as described in subsection (2), \$10.33.
- (k) In calendar year 2024, or a subsequent calendar year as described in subsection (2), \$10.56.

- (l) In calendar year 2025, or a subsequent calendar year as described in subsection (2), \$10.80.
- (m) In calendar year 2026, or a subsequent calendar year as described in subsection (2), \$11.04.
- (n) In calendar year 2027, or a subsequent calendar year as described in subsection (2), \$11.29.
- (o) In calendar year 2028, or a subsequent calendar year as described in subsection (2), \$11.54.
- (p) In calendar year 2029, or a subsequent calendar year as described in subsection (2), \$11.79.
- (q) In calendar year 2030, or a subsequent calendar year as described in subsection (2), \$12.05.

(2) An increase in the minimum hourly wage rate as prescribed in subsection (1) does not take effect if the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is 8.5% or greater for the calendar year preceding the calendar year of the prescribed increase. An increase in the minimum hourly wage rate as prescribed in subsection (1) that does not take effect pursuant to this subsection takes effect in the first calendar year following a calendar year for which the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is less than 8.5%.

Sec. 4a. (1) Except as otherwise provided in this act, 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) This state or a political subdivision, agency, or instrumentality of this 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 apply:

(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, if the practice is neither for the convenience of the employer nor because of the employer's operations.

(3) This state or a political subdivision, agency, or instrumentality of this 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 developmentally disabled 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 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 that 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 that 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: cultivating and tilling soil; dairying; producing, cultivating, growing, and harvesting agricultural or horticultural

commodities; raising 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 processing or preserving 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 licensing and regulatory affairs shall promulgate rules under 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 the effective date of this act arising from any change in existing law that results from the enactment of subsection (2) and incurred by the political subdivision.

(8) In lieu of monetary overtime compensation, an employee subject to this act may receive compensatory time off at a rate that is 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 must allow employees a total of at least 10 days of leave per year without loss of pay and must provide the compensatory time to the employee under 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) “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.

(ii) “Overtime assignment” means an assignment of hours for which overtime compensation is required under this act.

(iii) “Overtime compensation” means the compensation required under this section.

Sec. 4d. (1) The minimum hourly wage rate of an employee is 38% of the minimum hourly wage rate established in section 4 if all of the following occur:

(a) The employee receives gratuities in the course of his or her employment.

(b) If the gratuities described in subdivision (a) plus the minimum hourly wage rate under this subsection do not equal or exceed the minimum hourly wage rate otherwise established under section 4, the employer pays any shortfall to the employee.

(c) The gratuities are proven gratuities as indicated by the employee’s declaration for purposes of the federal insurance contribution act, 26 USC 3101 to 3128.

(d) The employee was informed by the employer of the provisions of this section.

(2) As used in this section, “gratuities” means tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.

Sec. 10. (1) This act does not apply to an employer that is subject to the minimum wage provisions of the fair labor standards act of 1938, 29 USC 201 to 219, unless those federal minimum wage provisions would result in a lower minimum hourly wage than provided in this act. Each of the following exceptions applies to an employer who is subject to this act only by application of this subsection:

(a) Section 4a does not apply.

(b) This act does not apply to an employee who is exempt from the minimum wage requirements of the fair labor standards act of 1938, 29 USC 201 to 219.

(2) Notwithstanding subsection (1), an employee shall be paid in accordance with the minimum wage and overtime compensation requirements of sections 4 and 4a if the employee meets either of the following conditions:

(a) He or she is employed in domestic service employment to provide companionship services as defined in 29 CFR 552.6 for individuals who, because of age or infirmity, are unable to care for themselves and is not a live-in domestic service employee as described in 29 CFR 552.102.

(b) He or she is employed to provide child care, but is not a live-in domestic service employee as described in 29 CFR 552.102. However, the requirements of sections 4 and 4a do not apply if the employee meets all of the following conditions:

(i) He or she is under the age of 18.

(ii) He or she provides services on a casual basis as defined in 29 CFR 552.5.

(iii) He or she provides services that do not regularly exceed 20 hours per week, in the aggregate.

(3) This act does not apply to persons employed in summer camps for not more than 4 months or to employees who are covered under section 14 of the fair labor standards act of 1938, 29 USC 214.

(4) This act does not apply to agricultural fruit growers, pickle growers and tomato growers, or other agricultural employers who traditionally contract for harvesting on a piecework basis, as to those employees used for harvesting, until the board has acquired sufficient data to determine an adequate basis to establish a scale of piecework and determines a scale equivalent to the prevailing minimum wage for that employment. The piece rate scale shall be equivalent to the minimum hourly wage in that, if the payment by unit of production is applied to a worker of average ability and diligence in harvesting a particular commodity, he or she receives an amount not less than the hourly minimum wage.

(5) This act does not apply to an individual who is 16 years of age or older but less than 21 years of age in his or her capacity as an ice hockey player for a junior ice hockey team that is a member of a regional, national, or international junior ice hockey league.

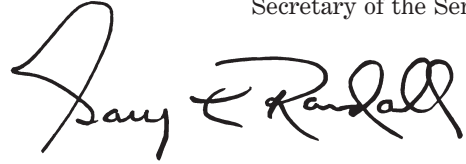
(6) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

Sec. 15. (1) This act shall supersede any acts or parts of acts inconsistent with or in conflict with this act, but only to the extent of such inconsistency or conflict.

(2) Any reference in any law to the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, shall be considered a reference to this act.



Secretary of the Senate



Clerk of the House of Representatives

Approved .....

.....  
Governor