

HOUSE BILL NO. 5036

October 03, 2019, Introduced by Reps. Greig, Gay-Dagnogo, Pohutsky, Camilleri, Hertel, Kuppa, Shannon, Manoogian, Koleszar, Hammoud, Cherry, Haadsma, Hope, Sabo, Sowerby, Wittenberg, Byrd, Kennedy, Tate, Coleman, Elder, Guerra, Garza, Lasinski, Ellison, Tyrone Carter, Rabhi, Chirkun, Sneller, Warren, LaGrand, Hood and Jones and referred to the Committee on Commerce and Tourism.

A bill to amend 2018 PA 337, entitled
"Improved workforce opportunity wage act,"
by amending section 4a (MCL 408.934a), as amended by 2018 PA 368.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) Except as otherwise provided in this act, an
2 employee ~~shall~~**must** 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) This state or a political subdivision, agency, or
6 instrumentality of this state does not violate subsection (1) with



1 respect to the employment of an employee in fire protection
2 activities or an employee in law enforcement activities, including
3 security personnel in correctional institutions, if any of the
4 following apply:

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

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

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



1 operations.

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

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

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

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

20 (a) ~~An~~**Subject to subsection (9), an** employee employed in a
 21 bona fide executive, administrative, or professional capacity,
 22 including an employee employed in the capacity of academic
 23 administrative personnel or teacher in an elementary or secondary
 24 school. However, an employee of a retail or service establishment
 25 is not excluded from the definition of employee employed in a bona
 26 fide executive or administrative capacity because of the number of
 27 hours in the employee's workweek that the employee devotes to
 28 activities not directly or closely related to the performance of
 29 executive or administrative activities, if less than 40% of the



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

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

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

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

10 (e) An employee employed in agriculture, including farming in
11 all its branches, which ~~among other things includes: cultivating~~
12 **includes, but is not limited to, any of the following:**

13 (i) **Cultivating** and tilling soil. ~~; dairying; producing;~~

14 (ii) **Dairying.**

15 (iii) **Producing**, cultivating, growing, and harvesting
16 agricultural or horticultural commodities. ~~; raising~~

17 (iv) **Raising** livestock, bees, fur-bearing animals, or poultry.
18 ~~; and a~~

19 (v) **A practice** ~~, including forestry or lumbering operations,~~
20 performed by a farmer or on a farm as an incident to or in
21 conjunction with farming operations, including ~~preparation~~ **any of**
22 **the following:**

23 (A) **Forestry or lumbering operations.**

24 (B) **Preparation** for market. ~~; delivery~~

25 (C) **Delivery** to storage, ~~or delivery to market, or to a~~
26 carrier for transportation to market. ~~or processing~~

27 (D) **Processing** or preserving perishable farm products.

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



1 (5) ~~The director of the department of licensing and regulatory~~
2 ~~affairs~~ **commissioner** shall promulgate rules under the
3 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
4 24.328, to define the terms used in subsection (4).

5 (6) For purposes of administration and enforcement, an amount
6 owing to an employee that is withheld in violation of this section
7 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 before
11 and after the effective date of this act arising from any change in
12 existing law that results from the enactment of subsection (2) and
13 incurred by the 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 that is not less than 1-1/2 hours for each hour of employment for
17 which overtime compensation is required under this act, subject to
18 all of the following:

19 (a) The employer must allow employees a total of at least 10
20 days of leave per year without loss of pay and must provide the
21 compensatory time to the employee under either of the following:

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

25 (ii) If employees are not represented by a collective
26 bargaining agent or other representative designated by the
27 employee, a plan adopted by the employer and provided in writing to
28 its employees that provides employees with a voluntary option to
29 receive compensatory time off for overtime work when there is an



1 express, voluntary written request to the employer by an individual
2 employee for compensatory time off in lieu of overtime pay before
3 the performance of any overtime assignment.

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

6 (c) The employee is not required as a condition of employment
7 to accept or request compensatory time. An employer shall not
8 directly or indirectly intimidate, threaten, or coerce or attempt
9 to 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~~
28 **after** the request, provide monetary compensation for that
29 compensatory time at a rate not less than the regular rate earned



1 by the employee ~~at the time~~ **when** the employee performed the
2 overtime work.

3 (f) An employee who has earned compensatory time authorized
4 under this subsection ~~shall, must,~~ upon the voluntary or
5 involuntary termination of employment or ~~upon expiration of~~ **if** this
6 subsection **is no longer in effect**, be paid unused compensatory time
7 at a rate of compensation not less than the regular rate earned by
8 the employee ~~at the time~~ **when** the employee performed the overtime
9 work. A terminated employee's receipt of or eligibility to receive
10 monetary compensation for earned compensatory time ~~shall must~~ not
11 be used by either of the following:

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

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

19 (g) An **employer shall allow an** employee ~~shall be permitted to~~
20 use any compensatory time accrued under this subsection for any
21 reason unless use of the compensatory time for the period requested
22 will unduly disrupt the operations of the employer.

23 (h) Unless prohibited by a collective bargaining agreement, an
24 employer may terminate a compensatory time plan upon not less than
25 60 days' notice to employees.

26 (i) As used in this subsection:

27 (i) "Compensatory time" and "compensatory time off" mean hours
28 during which an employee is not working and for which the employee
29 is compensated in accordance with this subsection in lieu of



1 monetary overtime compensation.

2 (ii) "Overtime assignment" means an assignment of hours for
3 which overtime compensation is required under this act.

4 (iii) "Overtime compensation" means the compensation required
5 under this section.

6 (9) The exemption from payment of overtime compensation under
7 subsection (4) (a) does not apply if the employee receives regular
8 weekly rate compensation at less than the following rate:

9 (a) For calendar year 2019, \$673.00.

10 (b) For calendar year 2020, \$769.00.

11 (c) For calendar year 2021, \$865.00.

12 (d) For calendar year 2022, \$961.00.

13 (e) For calendar year 2023 and until the adjusted regular
14 weekly rate compensation amount for 2024 takes effect under
15 subsection (10), \$1,057.00.

16 (10) Every January beginning in 2024, the state treasurer
17 shall adjust the regular weekly rate compensation amount then in
18 effect under subsection (9) or this subsection, as applicable, by
19 the most recent annual percentage increase, if any, in the second
20 quartile of the usual weekly earnings for full-time wage and salary
21 workers as published by the Bureau of Labor Statistics of the
22 United States Department of Labor, and shall round the adjusted
23 regular weekly rate compensation amount to the nearest dollar. The
24 wage and hour division of the department of licensing and
25 regulatory affairs shall post the adjusted regular weekly rate
26 compensation amount on its website by February 1 of the year in
27 which it is calculated, and the adjusted regular weekly rate
28 compensation amount is effective beginning April 1 of that year.

