

PAYMENT OF WAGES AND FRINGE BENEFITS
Act 390 of 1978

AN ACT to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1982, Act 524, Eff. Mar. 30, 1983.

The People of the State of Michigan enact:

408.471 Definitions.

Sec. 1. As used in this act:

- (a) "Department" means the department of labor.
- (b) "Employ" means to engage or permit to work.
- (c) "Employee" means an individual employed by an employer.
- (d) "Employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private; this state or an agency of this state; a city, county, village, township, school district, or intermediate school district; an institution of higher education; or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.
- (e) "Fringe benefits" means compensation due an employee pursuant to a written contract or written policy for holiday, time off for sickness or injury, time off for personal reasons or vacation, bonuses, authorized expenses incurred during the course of employment, and contributions made on behalf of an employee.
- (f) "Wages" means all earnings of an employee whether determined on the basis of time, task, piece, commission, or other method of calculation for labor or services except those defined as fringe benefits under subdivision (e) above.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.472 Payment of wages; time; regularly scheduled weekly or biweekly payday; monthly payday; overtime earnings during month of December; frequency of wage payments.

Sec. 2. (1) An employer, except an employer of an individual who harvests crops by hand as provided in subsection (2), shall pay the following to each employee:

(a) On or before the first day of each calendar month, the wages earned during the first 15 days of the preceding calendar month.

(b) On or before the fifteenth day of each calendar month, the wages earned during the preceding calendar month from the sixteenth day through the last day.

(2) An employer shall pay to each individual engaged in any phase of the hand harvesting of crops all wages earned in a week on or before the second day following the work week unless another method of payment is agreed upon by written contract.

(3) An employer who has established a regularly scheduled weekly or biweekly payday shall be deemed to be in compliance with subsection (1) provided that:

(a) Wages are paid to the employee on the established regularly recurring payday; and

(b) Such payday occurs on or before the fourteenth day following the end of the work period in which the wages are earned.

(4) An employer who establishes a monthly payday shall be deemed to be in compliance with subsection (1) provided that the employer pays to the employee on or before the first day of each calendar month all wages earned during the preceding calendar month.

(5) In the case of employees' overtime earnings earned during the month of December which would in

compliance with this section be paid to the employee after the sixteenth of December, an employer will be deemed to be in compliance with this section provided the employer meets all of the following:

(a) Employees receive all their wages, except overtime, for the month of December on or before the employees' regularly scheduled payday;

(b) And all overtime wages earned during the month of December are paid on or before the next regularly scheduled payday following the payday in which the overtime would otherwise be paid.

(6) An employer may pay wages more often than required by this section.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.473 Payment of fringe benefits; terms.

Sec. 3. An employer shall pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.474 Withholding payment of compensation due as fringe benefit to be paid at termination date.

Sec. 4. An employer shall not withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.475 Payment of wages to employee voluntarily leaving employment; payment of wages to employee discharged from employment; exception.

Sec. 5. (1) An employer shall pay to an employee voluntarily leaving employment all wages earned and due, as soon as the amount can with due diligence be determined. However, an employer shall pay all wages earned and due to an employee engaged in any phase of the hand harvesting of crops as soon as the amount can, with due diligence, be determined, but, in any event, not later than 3 days after the employee's voluntary termination of employment.

(2) An employer shall immediately pay to an employee who has been discharged from employment all wages earned and due, as soon as the amount can with due diligence be determined.

(3) This section shall not apply to an employee working under contract who either voluntarily leaves employment or is discharged from employment if the amount due cannot be determined until the termination of the contract. In such cases, the employer shall pay to the employee under the provisions of section 2 all wages earned by the employee as nearly as they can be estimated. Final payment shall be made in full at the termination of the contract.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.476 Wages; payment methods; deposit of employee's wages in bank, credit union, or savings and loan association; issuance of payroll debit card; consent; employees required to receive wages through direct deposit or payroll debit card; request to change method of receiving wages; fees or costs; definitions.

Sec. 6. (1) An employer or agent of an employer may pay wages to an employee by any of the following methods that protect the earnings of the employee from garnishment as required by 15 USC 1673 to the same extent they would be exempt while held by the employer:

(a) Payment in United States currency.

(b) Payment by a negotiable check or draft payable on presentation at a financial institution or other established place of business without discount in United States currency.

(c) Direct deposit or electronic transfer to the employee's account at a financial institution.

(d) Issuing a payroll debit card that complies with subsection (6).

(2) Except as provided in section 283a of the management and budget act, 1984 PA 431, MCL 18.1283a, or in subsection (4), an employer or agent of an employer shall not deposit an employee's wages in a bank, credit union, or savings and loan association without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to permit the deposit.

(3) Except as provided in subsection (4), an employer or agent of an employer shall not issue a payroll debit card to an employee under subsection (1)(d) without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card. However, an employer paying wages by payroll debit card to 1 or more of its employees as of January 1, 2005 may pay wages to any of its employees by payroll debit card without obtaining the consent described in this act.

(4) An employer or agent of an employer may require employees to receive wages only through direct deposit or a payroll debit card that complies with subsection (6) if the employer has provided the employee with all of the following:

(a) A written form that allows the employee the option to receive wages either by direct deposit to the employee's account at a financial institution or through a payroll debit card.

(b) A statement indicating that, except for an employee currently paid by direct deposit or any employee of an employer paying wages by payroll debit card to 1 or more of its employees on January 1, 2005, failure to return the form within 30 days with the account information necessary to implement direct deposit will be presumed to indicate consent to receiving wages through a payroll debit card. If an employee is currently paid by direct deposit, the method of payment shall not be changed to payroll debit card without written consent of the employee.

(c) Written disclosure of all of the following concerning the payroll debit card:

(i) The terms and conditions for use, including an itemized list of any and all fees.

(ii) The methods for accessing wages without charge.

(iii) A statement that, if the payroll debit card is used outside of the specified network of automatic teller machines, both the payroll card issuer and the operator of the automatic teller machine may impose charges.

(iv) The methods to obtain free balance inquiries.

(v) The employee's right to elect to change the method of receiving wages at any time, as provided in subsection (5).

(vi) That the payroll debit card does not provide access to a savings or checking account.

(5) An employee may request a change in the method of receiving wages established under subsection (4) at any time. The employer shall take no longer than 1 pay period to implement the change after the employer receives the request and any information necessary to implement the request. An employer shall allow an employee to select payment by direct deposit or electronic transfer under subsection (4) freely, without intimidation, coercion, or fear of discharge or reprisal for the choice.

(6) An employer shall not pay wages by issuing a payroll debit card unless the payroll debit card has all of the following characteristics:

(a) Entitles the employee to make at least 1 withdrawal or transfer without charge each pay period, but not more frequently than once per week, for any amount the employee elects up to the balance accessible through the card.

(b) Allows no changes in fees or terms of service unless the employee has received a written notice at least 21 days in advance of the date that the changes take effect identifying the changes.

(c) Provides a method for the employee to make an unlimited number of balance inquiries without charge, either electronically or by telephone.

(d) Is not linked to any form of credit, including a loan against future pay or a cash advance on future pay.

(7) An employer shall not require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages by a method described in subsection (1)(c) or (d).

(8) As used in this section:

(a) "Federally insured financial institution" means a state or nationally chartered bank or a state or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the United States government.

(b) "Payroll debit card" means a stored-value card issued by or on behalf of a federally insured financial institution that provides an employee with immediate access for withdrawal or transfer of his or her wages through a network of automatic teller machines. The term includes a card commonly known as a payroll debit card, payroll card, and paycard.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 2004, Act 534, Imd. Eff. Jan. 3, 2005;—Am. 2010, Act 323, Imd. Eff. Dec. 21, 2010;—Am. 2012, Act 440, Imd. Eff. Dec. 27, 2012.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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***** 408.477 THIS SECTION IS AMENDED EFFECTIVE SEPTEMBER 30, 2015: See 408.477.amended *****

408.477 Deductions from wages.

Sec. 7. (1) Except for those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund established by a corporation or labor organization under section 55 of the Michigan campaign finance act, 1976 PA 388, MCL 169.255, without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction. However, an employer that is a public body, as defined in section 11 of the Michigan campaign finance act, 1976 PA 388, MCL 169.211, shall not deduct, directly or indirectly, any amount from an employee's wages for a contribution to a separate segregated fund established under section 55 of the Michigan campaign finance act, 1976 PA 388, MCL 169.255, or a contribution or any payment to any committee established under the federal election campaign act of 1971, Public Law 92-225, 2 USC 431 to 455.

(2) Except as provided in this subsection and subsection (4), a deduction for the benefit of the employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than minimum rate as defined in the minimum wage law of 1964, 1964 PA 154, MCL 408.381 to 408.398. A nonprofit organization

shall obtain a written consent from an employee for deductions to that nonprofit organization that qualify as charitable contributions under federal law. However, this subsection does not require the nonprofit organization to obtain from an employee a separate written consent for each subsequent paycheck from which deductions that qualify as charitable contributions that benefit the employer are made. An employee at any time may rescind in writing his or her authorization to have charitable contributions deducted from his or her paycheck. As used in this subsection, "nonprofit organization" means an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).

(3) Each deduction from the wages of an employee shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees is not permitted.

(4) Within 6 months after making an overpayment of wages or fringe benefits that are paid directly to an employee, an employer may deduct the overpayment from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:

(a) The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits.

(b) The miscalculation, error, or misprint described in subdivision (a) was made by the employer, the employee, or a representative of the employer or employee.

(c) The employer provides the employee with a written explanation of the deduction at least 1 pay period before the wage payment affected by the deduction is made.

(d) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

(e) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

(f) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either of the following:

(i) The minimum rate as prescribed by subsection (2).

(ii) The minimum rate as prescribed by the fair labor standards act of 1938, chapter 676, 52 Stat. 1060, 29 USC 201 to 216 and 217 to 219.

(5) An employee who believes his or her employer has violated subsection (4) may file a complaint with the department within 12 months after the date of the alleged violation.

(6) As used in this section, "employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private, this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, an institution of higher education, or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1993, Act 124, Imd. Eff. July 21, 1993;—Am. 1995, Act 207, Imd. Eff. Nov. 29, 1995;—Am. 1995, Act 278, Eff. Mar. 28, 1996;—Am. 2012, Act 30, Imd. Eff. Feb. 28, 2012.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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***** 408.477.amended THIS AMENDED SECTION IS EFFECTIVE SEPTEMBER 30, 2015 *****

408.477.amended Deductions from wages.

Sec. 7. (1) Except for those deductions required or expressly permitted by law or by a collective bargaining agreement, an employer shall not deduct from the wages of an employee, directly or indirectly, any amount including an employee contribution to a separate segregated fund established by a corporation or labor organization under section 55 of the Michigan campaign finance act, 1976 PA 388, MCL 169.255, without the full, free, and written consent of the employee, obtained without intimidation or fear of discharge for refusal to permit the deduction. However, an employer that is a public body, as defined in section 11 of the Michigan campaign finance act, 1976 PA 388, MCL 169.211, shall not deduct, directly or indirectly, any amount from an employee's wages for a contribution to a separate segregated fund established under section 55 of the Michigan campaign finance act, 1976 PA 388, MCL 169.255, or a contribution or any payment to

any committee established under the federal election campaign act of 1971, Public Law 92-225, 2 USC 431 to 455.

(2) Except as provided in this subsection and subsections (4) and (5), a deduction for the benefit of the employer requires written consent from the employee for each wage payment subject to the deduction, and the cumulative amount of the deductions shall not reduce the gross wages paid to a rate less than the minimum rate as prescribed in the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424. A nonprofit organization shall obtain a written consent from an employee for deductions to that nonprofit organization that qualify as charitable contributions under federal law. However, this subsection does not require the nonprofit organization to obtain from an employee a separate written consent for each subsequent paycheck from which deductions that qualify as charitable contributions that benefit the employer are made. An employee at any time may rescind in writing his or her authorization to have charitable contributions deducted from his or her paycheck. As used in this subsection, "nonprofit organization" means an organization that is exempt from taxation under section 501(c)(3) of the internal revenue code, 26 USC 501(c)(3).

(3) Each deduction from the wages of an employee shall be substantiated in the records of the employer and shall be identified as pertaining to an individual employee. Prorating of deductions between 2 or more employees is not permitted.

(4) Within 6 months after making an overpayment of wages or fringe benefits that are paid directly to an employee, an employer may deduct the overpayment from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:

(a) The overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits.

(b) The miscalculation, error, or misprint described in subdivision (a) was made by the employer, the employee, or a representative of the employer or employee.

(c) The employer provides the employee with a written explanation of the deduction at least 1 pay period before the wage payment affected by the deduction is made.

(d) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

(e) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

(f) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either of the following:

(i) The minimum rate as prescribed by subsection (2).

(ii) The minimum rate as prescribed by the fair labor standards act of 1938, 29 USC 201 to 219.

(5) If an employer pays any amount of the employee's debt under a default judgment entered under section 4012(9) or (10) of the revised judicature act of 1961, 1961 PA 236, MCL 600.4012, the employer may deduct that amount from the employee's regularly scheduled wage payment without the written consent of the employee if all of the following conditions are met:

(a) The employer provides the employee with a written explanation of the deduction at least 1 pay period before the wage payment affected by the deduction is made.

(b) The deduction is not greater than 15% of the gross wages earned in the pay period in which the deduction is made.

(c) The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.

(d) The deduction does not reduce the regularly scheduled gross wages otherwise due the employee to a rate that is less than the greater of either of the following:

(i) The minimum rate as prescribed by subsection (2).

(ii) The minimum rate as prescribed by the fair labor standards act of 1938, 29 USC 201 to 219.

(6) An employee who believes his or her employer has violated subsection (4) or (5) may file a complaint with the department within 12 months after the date of the alleged violation.

(7) As used in this section, "employer" means an individual, sole proprietorship, partnership, association, or corporation, public or private, this state or an agency of this state, a city, county, village, township, school district, or intermediate school district, an institution of higher education, or an individual acting directly or indirectly in the interest of an employer who employs 1 or more individuals.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1993, Act 124, Imd. Eff. July 21, 1993;—Am. 1995, Act 207, Imd. Eff. Nov. 29, 1995;—Am. 1995, Act 278, Eff. Mar. 28, 1996;—Am. 2012, Act 30, Imd. Eff. Feb. 28, 2012;—Am. 2015, Act 15, Eff. Sept. 30, 2015.

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408.478 Fee, gift, tip, gratuity, or other remuneration or consideration, or contribution to charitable, social, or beneficial purpose, as condition of employment or continuation of employment.

Sec. 8. (1) An employer, agent or representative of an employer, or other person having authority from the employer to hire, employ, or direct the services of other persons in the employment of the employer shall not demand or receive, directly or indirectly from an employee, a fee, gift, tip, gratuity, or other remuneration or consideration, as a condition of employment or continuation of employment. This subsection does not apply to fees collected by an employment agency licensed under the laws of this state.

(2) Except for a contribution required or expressly permitted by law or by a collective bargaining agreement, an employer shall not require an employee or a person seeking employment to contribute directly or indirectly to a charitable, social, or beneficial purpose as a condition of employment or continuation of employment.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.479 Records and statements; rules.

Sec. 9. (1) An employer shall maintain a record for each employee which indicates the employee's name, address, birth date, occupation or classification in which employed, total basic rate of pay, total hours worked in each pay period, total wages paid each pay period, a separate itemization of deductions and a listing or itemization of fringe benefits. In the case of an employer who has a group of 10 or more employees who have identical fringe benefits, 1 central itemization or listing may be kept for each group, providing the record identifies what group they belong to.

(2) An employer shall furnish each employee at the time of payment of wages a statement of the hours worked by the employee, the gross wages paid, identification of the pay period for which payment is being made, a separate itemization of deductions, and for each hand harvester paid on a piece work basis furnish a statement of the total number of units harvested by the employee.

(3) An employer shall maintain the records required under this section for not less than 3 years. Those records shall be open to inspection by the director of labor or an authorized representative of the director at any reasonable time.

(4) Employers need not maintain payroll records indicating the total hours worked by, or furnish wage statements of hours worked by:

(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, except that an employee of a retail or service establishment shall not be 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 which 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.

(5) The director of labor shall promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as

amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws, to define the terms used in subsection (4).

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

Administrative rules: R 408.9001 and R 408.9002 et seq. of the Michigan Administrative Code.

408.480 Payment of wages and fringe benefits on behalf of deceased employee; discharge and release of employer.

Sec. 10. (1) An employer shall pay fringe benefits pursuant to this section on behalf of a deceased employee as designated by the terms set forth in the written contract, written policy, or written plan.

(2) Except as provided in subsection (3), an employer shall pay the wages and fringe benefits not paid in accordance with subsection (1) due a deceased employee to 1 or more of the following persons in the priority listed:

- (a) The deceased employee's surviving spouse.
- (b) The deceased employee's surviving children.
- (c) The deceased employee's surviving mother or father.
- (d) The deceased employee's surviving sister or brother.

(3) If the employee has established a designee or designees by a signed statement filed with the employer before the employee's death and letters of administration are not required to be issued for the estate of the deceased employee, the employer shall make those payments to the designee or designees in the signed statement.

(4) Payment under this section shall be a full discharge and release of the employer from the wages and fringe benefits due and owing the deceased employee.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.481 Complaint; filing; form; notice to employer; investigation; informal resolution of dispute; notice to employer and employee; request for review; oaths and affirmations; subpoena; witnesses; evidence; parties to proceeding; appointment and duties of hearing officer; hearing; determination; judicial review; venue.

Sec. 11. (1) An employee who believes that his or her employer has violated this act may file a written complaint with the department within 12 months after the alleged violation. A complaint filed under section 13(2) shall be filed within 30 days after the alleged violation occurs. Bilingual complaint forms shall be provided by the department in those areas where substantial numbers of non-English speaking employees are employed.

(2) Within a reasonable time after a complaint is filed the department shall notify the employer and investigate the claim and shall attempt to informally resolve the dispute.

(3) If the department is unable to informally resolve the dispute, the department shall notify the employer and employee within 90 days after the complaint is filed. The notification shall include a determination of the merits of the complaint and shall cite the specific violation, if any, wages and fringe benefits due, and specific penalties assessed.

(4) The employer or employee may request a review of the department's determination within 14 days after notification is issued. If a request for a review by either the employer or employee is not received by the department within 14 days, in the absence of a showing of good cause for a late request, the department's determination is final.

(5) For the purpose of an investigation or proceeding under this act, the director of labor or an authorized representative of the director may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of records or other documents which the department considers relevant or material to the inquiry.

(6) The employee, employer, and the department shall be parties to a proceeding before a hearings officer brought pursuant to this section.

(7) The director shall appoint hearings officers to make determinations in proceedings brought pursuant to this section. All proceedings in a hearing shall be conducted pursuant to the procedures applicable to the trial of contested cases under Act No. 306 of the Public Acts of 1969, as amended, being sections 24.201 to 24.315 of the Michigan Compiled Laws. The hearings officer shall affirm, modify, or rescind the order of the department and may assess costs as provided in section 18(3).

(8) The hearings officer shall issue a determination which constitutes a final disposition of the proceedings to each party within 30 days after the conclusion of the hearing. The determination of the hearings officer shall become the final agency order upon receipt by the parties.

(9) A party to the proceeding may obtain judicial review of the determination of the hearings officer pursuant to Act No. 306 of the Public Acts of 1969, as amended. Venue for an appeal under this act shall only be in the circuit where the employee is a resident, where the employment occurred, or where the employer has a principal place of business.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.481a Reciprocal agreements.

Sec. 11a. The director of the department may enter into reciprocal agreements with other states, Canada, or a Canadian province or territory for the collection of claims for wages, fringe benefits, and penalties assessed under section 18.

History: Add. 1996, Act 215, Imd. Eff. May 28, 1996;—Am. 2001, Act 170, Imd. Eff. Nov. 30, 2001.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.482 Rules.

Sec. 12. The department may promulgate rules pursuant to Act No. 306 of the Public Acts of 1969, as amended, to implement and administer this act.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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Administrative rules: R 408.9001; R 408.9002 et seq.; and R 408.22951 et seq. of the Michigan Administrative Code.

408.483 Discrimination; complaint; investigation; rehiring or reinstatement of employee with back pay; review of determination.

Sec. 13. (1) An employer shall not discharge an employee or discriminate against an employee because the employee filed a complaint, instituted or caused to be instituted a proceeding under or regulated by this act, testified or is about to testify in a proceeding, or because of the exercise by the employee on behalf of an employee or others of a right afforded by this act.

(2) An employee who believes that he or she is discharged or otherwise discriminated against by an employer in violation of this section may file a complaint with the department alleging the discrimination within 30 days after the violation occurs. Upon receipt of the complaint, the department shall cause an investigation to be made. If, upon the investigation, the department determines that this section was violated, the department shall order the rehiring or reinstatement of an employee to his or her former position with back pay.

(3) An employer may seek review of the department's determination by following the procedure provided in section 11(4) to (9).

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.483a Prohibited conduct.

Sec. 13a. (1) An employer shall not do any of the following:

(a) Require as a condition of employment nondisclosure by an employee of his or her wages.

(b) Require an employee to sign a waiver or other document which purports to deny an employee the right to disclose his or her wages.

(c) Discharge, formally discipline, or otherwise discriminate against for job advancement an employee who discloses his or her wages.

History: Add. 1982, Act 524, Eff. Mar. 30, 1983.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.484 Violation as misdemeanor.

Sec. 14. An employer who violates this act, including failure to pay the wages and fringe benefits due an employee as provided in this act, is guilty of a misdemeanor.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

For creation of the new wage and hour division as a type II agency within the department of labor and economic growth, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

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For transfer of powers and duties of the former wage and hour division of the department of consumer and industry services, transferred to the bureau of worker's and unemployment compensation, to the new wage and hour division within the department of labor and economic growth by type II transfer, see E.R.O. No. 2003-1, compiled at MCL 445.2011.

408.485 Failure to pay wages and fringe benefits as misdemeanor; penalty.

Sec. 15. An employer who, with intent to defraud, fails to make payment of the wages and fringe benefits due an employee as provided in this act, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.486 Issuance of check or other order for payment of wages; violation; penalty; prima facie evidence.

Sec. 16. (1) An employer who issues a check or other order for the payment of wages and who, at the time of issuance, knows or should know that the check or other order shall not be paid, is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00, or imprisonment for not more than 1 year, or both.

(2) Any of the following is prima facie evidence that the person at the time of issuance of the check or other order for the payment of wages, knew or should have known it should not be paid:

(a) Proof that, at the time of issuance, there was not an account with the drawee.

(b) Proof that, at the time of issuance, there were not sufficient funds or credit with the drawee and that the employer failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

(c) Proof that even though presentment was made within a reasonable time, the employer did not have sufficient funds or credit with the drawee, and failed within 5 days after receiving notice of nonpayment or dishonor to pay the check or other order.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.487 Department as trustee for employee.

Sec. 17. The department shall be the trustee for the employee in proceedings under this act, and shall distribute and account for funds collected.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.488 Violations; ordering payments; civil penalty.

Sec. 18. (1) The department shall order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay the following:

(a) Wages due to the employee.

(b) Fringe benefits due to or on the behalf of the employee in accordance with the terms set forth in the written contract or written policy.

(c) A penalty at the rate of 10% annually on the wages and fringe benefits due beginning at the time the employer is notified that a complaint has been filed and ending when payment is made.

(2) The department may order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay to the employee exemplary damages of not more than twice the amount of the wages and fringe benefits which were due, if the violation is flagrant or repeated.

(3) The department may order an employer who violates section 2, 3, 4, 5, 6, 7, or 8 to pay attorney costs, hearing costs, and transcript costs.

(4) The department may assess a civil penalty of not more than \$1,000.00 against an employer who violates this act, which civil penalty shall be credited to the general fund of this state.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978;—Am. 1978, Act 602, Imd. Eff. Jan. 4, 1979.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.489 Civil action.

Sec. 19. The director of labor shall initiate, in the county where the violation occurred, in the county of Ingham, or in the county where the employer has its principal office, the civil action necessary to enforce an order of the department which has become a final agency order as prescribed in this act.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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408.490 Repeal of MCL 408.501 to 408.506, 408.521 to 408.525a, and 408.561 to 408.563.

Sec. 20. Act No. 221 of the Public Acts of 1897, being sections 408.561 to 408.563 of the Compiled Laws of 1970; Act No. 62 of the Public Acts of 1925, being sections 408.521 to 408.525a of the Compiled Laws of 1970; and Act No. 224 of the Public Acts of 1935, as amended, being sections 408.501 to 408.506 of the Compiled Laws of 1970, are repealed.

History: 1978, Act 390, Imd. Eff. Aug. 1, 1978.

Compiler's note: For creation of bureau of worker's and unemployment compensation within department of consumer and industry services; transfer of powers and duties of bureau of worker's compensation and unemployment agency to bureau of worker's and unemployment compensation; transfer of powers and duties of director of bureau of worker's compensation and director of unemployment agency to director of bureau of worker's and unemployment compensation; and, transfer of powers and duties of wage and hour division of worker's compensation board of magistrates to bureau of worker's and unemployment compensation, see E.R.O. No. 2002-1, compiled at MCL 445.2004 of the Michigan Compiled Laws.

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