

HOUSE BILL No. 5372

December 13, 1989, Introduced by Reps. DeLange, Stacey, Hoekman, Hillegonds, Krause, Fitzgerald, Strand, Dunaskiss and Allen and referred to the Committee on Labor.

A bill to amend sections 4, 4a, and 7 of Act No. 154 of the Public Acts of 1964, entitled as amended
"Minimum wage law of 1964,"
being sections 408.384, 408.384a, and 408.387 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 4, 4a, and 7 of Act No. 154 of the
2 Public Acts of 1964, being sections 408.384, 408.384a, and
3 408.387 of the Michigan Compiled Laws, are amended to read as
4 follows:

5 Sec. 4. (1) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN
6 SUBSECTION (4), THE minimum hourly rate shall be:

7 (a) Beginning ~~January 1, 1977, \$2.30~~ APRIL 1, 1990,
8 \$3.80.

1 (b) Beginning ~~January 1, 1978, \$2.65~~ APRIL 1, 1991,
2 \$4.25.

3 ~~(c) Beginning January 1, 1979, \$2.90.~~

4 ~~(d) Beginning January 1, 1980, \$3.10.~~

5 ~~(e) Beginning January 1, 1981, \$3.35.~~

6 (2) ~~The~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (4),
7 THE increases or decreases in the minimum hourly rate, estab-
8 lished in this act after 1967, shall reflect corresponding
9 increases or decreases in the cost of living.

10 (3) AS USED IN THIS SECTION:

11 (A) "MIGRANT AGRICULTURAL WORKER" MEANS THAT TERM AS DEFINED
12 IN SECTION 3(8) OF THE MIGRANT AND SEASONAL AGRICULTURAL WORKER
13 PROTECTION ACT, PUBLIC LAW 97-470, 29 U.S.C. 1802.

14 (B) "SEASONAL AGRICULTURAL WORKER" MEANS THAT TERM AS
15 DEFINED IN SECTION 3(10) OF THE MIGRANT AND SEASONAL AGRICULTURAL
16 WORKER PROTECTION ACT, PUBLIC LAW 97-470 29 U.S.C. 1802.

17 (C) "TRAINING WAGE" IS A WAGE OF THE AMOUNT DESCRIBED IN
18 SUBSECTION (4), SUBJECT TO THE REQUIREMENTS OF SUBSECTIONS (5)
19 THROUGH (9).

20 (4) UNTIL APRIL 1, 1993, AN EMPLOYER MAY PAY TO AN EMPLOYEE
21 WHO IS NOT AN EXEMPT EMPLOYEE UNDER SUBSECTION (5) A TRAINING
22 WAGE OF NOT LESS THAN 85% OF THE APPLICABLE WAGE AS DESCRIBED IN
23 SUBSECTION (1), FOR A PERIOD OF NOT MORE THAN 90 DAYS OF EMPLOY-
24 MENT AFTER THE DATE OF THE HIRING OF THE EMPLOYEE, IF ALL OF THE
25 FOLLOWING CIRCUMSTANCES EXIST:

26 (A) THE EMPLOYER DOES NOT LAY OFF OR REDUCE THE WAGES OF ANY
27 OTHER EMPLOYEE IN THE SAME OR SUBSTANTIALLY SIMILAR POSITION AS A

1 RESULT OF HIRING AN EMPLOYEE WHO IS TO BE PAID THE TRAINING
2 WAGE.

3 (B) THE AMOUNT OF TRAINING WAGES PAID BY THE EMPLOYER DOES
4 NOT EXCEED 25% OF THE TOTAL WAGES PAID BY THE EMPLOYER FOR
5 EMPLOYEES UNDER THIS SUBSECTION AND SUBSECTION (1) IN ANY CALEN-
6 DAR MONTH.

7 (C) THE EMPLOYER INFORMS THE EMPLOYEE IN WRITING BEFORE
8 HIRING THE EMPLOYEE OF THE EMPLOYER'S INTENT TO PAY THE TRAINING
9 WAGE.

10 (5) AN EMPLOYER SHALL NOT PAY A TRAINING WAGE TO ANY OF THE
11 FOLLOWING:

12 (A) A MIGRANT AGRICULTURAL WORKER.

13 (B) A SEASONAL AGRICULTURAL WORKER.

14 (C) AN EMPLOYEE MORE THAN 19 YEARS OF AGE.

15 (6) AN EMPLOYER DESIRING TO HIRE AN EMPLOYEE AT A TRAINING
16 WAGE SHALL APPLY TO THE COMMISSIONER FOR A SEPARATE AUTHORIZATION
17 FOR THE HIRING OF EACH EMPLOYEE AT THE TRAINING WAGE. THE COM-
18 MISSIONER SHALL ISSUE AN AUTHORIZATION UPON THE EMPLOYER'S AGREE-
19 MENT TO DO ALL OF THE FOLLOWING:

20 (A) HIRE THE EMPLOYEE TO DO PRODUCTIVE WORK DESIGNED TO PRO-
21 VIDE TRAINING, TECHNICAL, AND OTHER SKILLS THAT ARE ESSENTIAL TO
22 HIS OR HER FULL AND ADEQUATE PERFORMANCE.

23 (B) PROVIDE TO THE EMPLOYEE AND THE COMMISSIONER A COPY OF
24 THE TRAINING PROGRAM.

25 (C) POST IN A CONSPICUOUS PLACE AT THE EMPLOYMENT SITE A
26 NOTICE OF THE TYPES OF JOBS FOR WHICH THE EMPLOYER IS PROVIDING A
27 TRAINING WAGE.

1 (7) AN EMPLOYER MAY NOT PAY A NEW EMPLOYEE A TRAINING WAGE
2 IF THE EMPLOYEE WAS ALREADY PAID A TRAINING WAGE BY 1 OR MORE
3 OTHER EMPLOYERS UNLESS THAT EMPLOYER APPLIES FOR AND OBTAINS FROM
4 THE COMMISSIONER AN EXCEPTION AS DESCRIBED IN SUBSECTION (8).

5 (8) UPON APPLICATION BY AN EMPLOYER, THE COMMISSIONER OR HIS
6 OR HER DESIGNEE SHALL GRANT AN EXCEPTION TO THE REQUIREMENT OF
7 SUBSECTION (7) WHICH WILL ALLOW AN EMPLOYER TO PAY A TRAINING
8 WAGE TO AN EMPLOYEE FOR NOT MORE THAN 90 DAYS IF THE EMPLOYER
9 DEMONSTRATES TO THE SATISFACTION OF THE COMMISSIONER THAT THE
10 EMPLOYEE IS EMPLOYED IN PRODUCTIVE WORK THAT IS DESIGNED TO PRO-
11 VIDE TRAINING, TECHNICAL, AND OTHER SKILLS TO THE EMPLOYEE THAT
12 ARE ESSENTIAL TO HIS OR HER FULL AND ADEQUATE PERFORMANCE.

13 (9) AN EMPLOYEE SHALL PROVIDE TO AN EMPLOYER PROOF OF ANY
14 OTHER EMPLOYMENT IN WHICH THE EMPLOYEE WAS PAID A TRAINING WAGE.
15 AN EMPLOYER'S GOOD FAITH RELIANCE ON THE INFORMATION PROVIDED BY
16 AN EMPLOYEE REGARDING THE PREVIOUS PAYMENT OF A TRAINING WAGE IS
17 A COMPLETE DEFENSE TO ANY CIVIL OR CRIMINAL ACTION BROUGHT BY ANY
18 PERSON FOR A VIOLATION OF THIS ACT OR RULES PROMULGATED UNDER
19 THIS ACT.

20 (10) THE COMMISSIONER SHALL REPORT TO THE CHAIRPERSONS OF
21 THE SENATE AND HOUSE STANDING COMMITTEES RESPONSIBLE FOR LEGISLA-
22 TION CONCERNING LABOR, NOT LATER THAN MARCH 1, 1993, ON THE
23 EFFECTIVENESS OF THE TRAINING WAGE AS IT APPLIES TO EMPLOYEES IN
24 THIS STATE WHO ARE NOT COVERED BY THE FEDERAL MINIMUM WAGE LAW.

25 Sec. 4a. (1) Except as otherwise provided in this section,
26 an employee shall receive compensation at not less than 1-1/2

1 times the regular rate at which the employee is employed for
2 employment in a workweek in excess of 40 hours.

3 (2) The state or a political subdivision, agency, or instru-
4 mentality of the state ~~shall~~ IS not ~~be considered to have~~
5 ~~violated~~ IN VIOLATION OF subsection (1) with respect to the
6 employment of an employee in fire protection activities or an
7 employee in law enforcement activities, including security per-
8 sonnel in correctional institutions, if any of the following
9 ~~applies~~ APPLY:

10 (a) In a work period of 28 consecutive days, the employee
11 receives for tours of duty, which in the aggregate exceed 216
12 hours, compensation for those hours in excess of 216 at a rate
13 not less than 1-1/2 times the regular rate at which the employee
14 is employed, which rate shall be not less than the statutory min-
15 imum hourly rate.

16 (b) In the case of that employee to whom a work period of at
17 least 7 but less than 28 days applies, in the employee's work
18 period the employee receives for tours of duty, which in the
19 aggregate exceed a number of hours which bears the same ratio to
20 the number of consecutive days in the employee's work period as
21 216 bears to 28 days, compensation for those hours in excess of
22 216 at a rate not less than 1-1/2 times the regular rate at which
23 the employee is employed, which rate shall be not less than the
24 statutory minimum hourly rate.

25 (c) If an employee engaged in fire protection activities
26 would receive overtime payments under this act solely as a result
27 of that employee's trading of time with another employee pursuant

1 to a voluntary trading time arrangement, overtime, if any, shall
2 be paid to employees who participate in the trading of time as if
3 the time trade had not occurred. As used in this subdivision,
4 "trading time arrangement" means a practice under which employees
5 of a fire department voluntarily substitute for one another to
6 allow an employee to attend to personal matters, which practice
7 is neither for the convenience of the employer nor because of the
8 employer's operations.

9 (3) The state or a political subdivision, agency, or instru-
10 mentality of the state engaged in the operation of a hospital or
11 an establishment which is an institution primarily engaged in the
12 care of the sick, the aged, or the mentally ill or defective who
13 reside on the premises shall not be considered to have violated
14 subsection (1) if: pursuant to a written agreement or written
15 employment policy arrived at between the employer and the
16 employee before performance of the work, a work period of 14 con-
17 secutive days is accepted instead of the workweek of 7 consec-
18 tive days for purposes of overtime computation; and if, for the
19 employee's employment in excess of 8 hours in a workday and in
20 excess of 80 hours in the 14-day period, the employee receives
21 compensation at a rate of 1-1/2 times the regular rate, which
22 rate shall be not less than the statutory minimum hourly rate, at
23 which the employee is employed.

24 (4) Subsections (1), (2), and (3) shall not apply to any of
25 the following:

26 (a) An employee employed in a bona fide executive,
27 administrative, or professional capacity, including an employee

1 employed in the capacity of academic administrative personnel or
2 teacher in an elementary or secondary school, except that an
3 employee of a retail or service establishment shall not be
4 excluded from the definition of employee employed in a bona fide
5 executive or administrative capacity because of the number of
6 hours in the employee's workweek which the employee devotes to
7 activities not directly or closely related to the performance of
8 executive or administrative activities, if less than 40% of the
9 employee's hours in the workweek are devoted to those
10 activities.

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

12 (c) A political appointee of a person holding public elec-
13 tive office or a political appointee of a public body.

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

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

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

3 (G) AN EMPLOYEE EMPLOYED FOR NOT MORE THAN A TOTAL OF 10
4 HOURS IN EXCESS OF THE MAXIMUM WORK WEEK AS SPECIFIED BY LAW,
5 COMPANY POLICY, OR THE TERMS OF AN EMPLOYEE CONTRACT IF DURING
6 THOSE HOURS THE EMPLOYER IS PROVIDING REMEDIAL EDUCATION TO AN
7 EMPLOYEE WHO LACKS A HIGH SCHOOL DIPLOMA OR WHO LACKS EDUCATIONAL
8 ATTAINMENT AT AN EIGHTH GRADE LEVEL AS DETERMINED BY STANDARDS
9 CONTAINED IN RULES PROMULGATED BY THE COMMISSIONER.

10 (5) The director of labor shall promulgate rules pursuant to
11 THE ADMINISTRATIVE PROCEDURES ACT OF 1969, Act No. 306 of the
12 Public Acts of 1969, as amended, being sections 24.201 to 24.328
13 of the Michigan Compiled Laws, to define the terms used in sub-
14 section (4). Subsection (4)(c) shall not apply to a person cov-
15 ered by a civil service system.

16 (6) For purposes of administration and enforcement, an
17 amount owing to an employee which is withheld in violation of
18 this section shall be considered to be unpaid minimum wages under
19 this act.

20 (7) The legislature shall annually appropriate from the gen-
21 eral fund to each political subdivision affected by subsection
22 (2) an amount equal to the difference in direct labor costs
23 before and after ~~the effective date of subsection (2)~~
24 JANUARY 4, 1979 which arises from any change in existing law
25 resulting from the enactment of subsection (2) and incurred by
26 each such political subdivision.

1 Sec. 7. On petition of a party in interest or on its own
2 motion, the wage deviation board shall DO THE FOLLOWING:

3 (a) Determine ~~the amount of the gratuities and~~ the value
4 to the employee of board, ~~and~~ lodging, and apparel or other
5 items or services customarily furnished to an employee for his OR
6 HER benefit, and establish ~~therefrom~~ FROM THOSE ITEMS OR
7 SERVICES a reasonable deduction from the minimum wage set in this
8 act to be paid by the employer. ~~In no case shall the~~ BEGINNING
9 APRIL 1, 1990, THE total deduction ~~allowed~~ FOR BOARD, LODGING,
10 AND APPAREL OR OTHER ITEMS OR SERVICES CUSTOMARILY FURNISHED TO
11 AN EMPLOYEE COMBINED WITH THE TOTAL DEDUCTION FOR THE GRATUITIES
12 SHALL NOT be more than ~~25%~~ 45% of the hourly wage rate OR
13 RESULT IN AN HOURLY WAGE RATE OF LESS THAN \$2.51 AN HOUR.
14 BEGINNING APRIL 1, 1991, THAT TOTAL DEDUCTION ALLOWED SHALL NOT
15 BE MORE THAN 50% OF THE HOURLY WAGE RATE OR RESULT IN AN HOURLY
16 WAGE RATE OF LESS THAN \$2.51 PER HOUR. The WAGE DEVIATION board
17 may grant a stay of present employment situation until such
18 determination.

19 (b) ~~Establish~~ EXCEPT IN THE CASE OF AN EMPLOYEE BEING PAID
20 THE TRAINING WAGE DESCRIBED IN SECTION 4, ESTABLISH a suitable
21 scale of rates for apprentices, learners, physically and mentally
22 handicapped persons who are clearly unable to meet normal produc-
23 tion standards, which may be less than the regular minimum wage
24 rate for experienced and nonhandicapped workers.