

**SUBSTITUTE FOR
SENATE BILL NO. 934**

A bill to fix minimum wages for employees within this state; to prohibit wage discrimination; to provide for a wage deviation board; to provide for the administration and enforcement of this act; to prescribe penalties for the violation of this act; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "workforce opportunity wage act".

3 Sec. 2. As used in this act:

4 (a) "Commissioner" means the director of the department of
5 licensing and regulatory affairs.

6 (b) "Employ" means to engage, suffer, or permit to work.

7 (c) "Employee" means an individual not less than 16 years of
8 age employed by an employer on the premises of the employer or at a

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1 fixed site designated by the employer, and includes a minor
2 employed subject to section 15(1) of the youth employment standards
3 act, 1978 PA 90, MCL 409.115.

4 (d) "Employer" means a person, firm, or corporation, including
5 the state and its political subdivisions, agencies, and
6 instrumentalities, and a person acting in the interest of the
7 employer, who employs 2 or more employees at any 1 time within a
8 calendar year. An employer is subject to this act during the
9 remainder of that calendar year.

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

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

- 14 (a) Before September 1, 2014, \$7.40.
15 (b) Beginning September 1, 2014, \$8.15.
16 (c) Beginning January 1, 2015, \$8.50.
17 (d) Beginning January 1, 2016, \$8.85.
18 (e) Beginning January 1, 2017, \$9.20.

19 (2) Every October beginning in October 2017, the wage and
20 hours division of the department of licensing and regulatory
21 affairs shall calculate an adjusted minimum wage rate. The adjusted
22 rate shall be calculated by multiplying the otherwise applicable
23 minimum wage by the percentage increase, if any, in the most
24 comprehensive index of consumer prices available for the Detroit
25 area from the United States department of labor, bureau of labor
26 statistics, for the most recent 12-month period for which data are
27 available<<, not to exceed 4%>>. The adjusted minimum wage rate shall
be posted on the

1 department's website by November 1 of the year it is calculated and
2 is effective beginning January 1 of the succeeding year.

3 (3) An increase in the minimum hourly wage rate as prescribed
4 in subsection (1) or (2) does not take effect if at any time during
5 the year preceding the year of a prescribed increase, the
6 unemployment rate for this state is greater than 10%.

7 Sec. 4a. (1) Except as otherwise provided in this act, an
8 employee shall receive compensation at not less than 1-1/2 times
9 the regular rate at which the employee is employed for employment
10 in a workweek in excess of 40 hours.

11 (2) This state or a political subdivision, agency, or
12 instrumentality of this state does not violate subsection (1) with
13 respect to the employment of an employee in fire protection
14 activities or an employee in law enforcement activities, including
15 security personnel in correctional institutions, if any of the
16 following apply:

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

23 (b) For an employee to whom a work period of at least 7 but
24 less than 28 days applies, in the employee's work period the
25 employee receives for tours of duty, which in the aggregate exceed
26 a number of hours which bears the same ratio to the number of
27 consecutive days in the employee's work period as 216 bears to 28

1 days, compensation for those excess hours at a rate not less than
2 1-1/2 times the regular rate at which the employee is employed. The
3 employee's regular rate shall be not less than the statutory
4 minimum hourly rate.

5 (c) If an employee engaged in fire protection activities would
6 receive overtime payments under this act solely as a result of that
7 employee's trading of time with another employee pursuant to a
8 voluntary trading time arrangement, overtime, if any, shall be paid
9 to employees who participate in the trading of time as if the time
10 trade had not occurred. As used in this subdivision, "trading time
11 arrangement" means a practice under which employees of a fire
12 department voluntarily substitute for one another to allow an
13 employee to attend to personal matters, if the practice is neither
14 for the convenience of the employer nor because of the employer's
15 operations.

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

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

27 (b) For the employee's employment in excess of 8 hours in a

1 workday and in excess of 80 hours in the 14-day period, the
2 employee receives compensation at a rate of 1-1/2 times the regular
3 rate, which shall be not less than the statutory minimum hourly
4 rate at which the employee is employed.

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

7 (a) An employee employed in a bona fide executive,
8 administrative, or professional capacity, including an employee
9 employed in the capacity of academic administrative personnel or
10 teacher in an elementary or secondary school. However, an employee
11 of a retail or service establishment is not excluded from the
12 definition of employee employed in a bona fide executive or
13 administrative capacity because of the number of hours in the
14 employee's workweek that the employee devotes to activities not
15 directly or closely related to the performance of executive or
16 administrative activities, if less than 40% of the employee's hours
17 in the workweek are devoted to those activities.

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

19 (c) A political appointee of a person holding public elective
20 office or a political appointee of a public body, if the political
21 appointee described in this subdivision is not covered by a civil
22 service system.

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

26 (e) An employee employed in agriculture, including farming in
27 all its branches, which among other things includes: cultivating

1 and tilling soil; dairying; producing, cultivating, growing, and
2 harvesting agricultural or horticultural commodities; raising
3 livestock, bees, fur-bearing animals, or poultry; and a practice,
4 including forestry or lumbering operations, performed by a farmer
5 or on a farm as an incident to or in conjunction with farming
6 operations, including preparation for market, delivery to storage,
7 or delivery to market or to a carrier for transportation to market
8 or processing or preserving perishable farm products.

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

11 (5) The director of the department of licensing and regulatory
12 affairs shall promulgate rules under the administrative procedures
13 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms
14 used in subsection (4).

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

18 (7) The legislature shall annually appropriate from the
19 general fund to each political subdivision affected by subsection
20 (2) an amount equal to the difference in direct labor costs before
21 and after January 4, 1979 arising from any change in existing law
22 that results from the enactment of subsection (2) and incurred by
23 the political subdivision.

24 (8) In lieu of monetary overtime compensation, an employee
25 subject to this act may receive compensatory time off at a rate
26 that is not less than 1-1/2 hours for each hour of employment for
27 which overtime compensation is required under this act, subject to

1 all of the following:

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

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

8 (ii) If employees are not represented by a collective
9 bargaining agent or other representative designated by the
10 employee, a plan adopted by the employer and provided in writing to
11 its employees that provides employees with a voluntary option to
12 receive compensatory time off for overtime work when there is an
13 express, voluntary written request to the employer by an individual
14 employee for compensatory time off in lieu of overtime pay before
15 the performance of any overtime assignment.

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

18 (c) The employee is not required as a condition of employment
19 to accept or request compensatory time. An employer shall not
20 directly or indirectly intimidate, threaten, or coerce or attempt
21 to intimidate, threaten, or coerce an employee for the purpose of
22 interfering with the employee's rights under this section to
23 request or not request compensatory time off in lieu of payment of
24 overtime compensation for overtime hours, or requiring an employee
25 to use compensatory time. In assigning overtime hours, an employer
26 shall not discriminate among employees based upon an employee's
27 choice to request or not request compensatory time off in lieu of

1 overtime compensation. An employer who violates this subsection is
2 subject to a civil fine of not more than \$1,000.00.

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

5 (i) Maintain in an employee's pay record a statement of
6 compensatory time earned by that employee in the pay period that
7 the pay record identifies.

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

11 (e) Upon the request of an employee who has earned
12 compensatory time, the employer shall, within 30 days following the
13 request, provide monetary compensation for that compensatory time
14 at a rate not less than the regular rate earned by the employee at
15 the time the employee performed the overtime work.

16 (f) An employee who has earned compensatory time authorized
17 under this subsection shall, upon the voluntary or involuntary
18 termination of employment or upon expiration of this subsection, be
19 paid unused compensatory time at a rate of compensation not less
20 than the regular rate earned by the employee at the time the
21 employee performed the overtime work. A terminated employee's
22 receipt of or eligibility to receive monetary compensation for
23 earned compensatory time shall not be used by either of the
24 following:

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

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1 (ii) The state to deny unemployment compensation or diminish an
2 employee's entitlement to unemployment compensation benefits under
3 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
4 421.1 to 421.75.

5 (g) An employee shall be permitted to use any compensatory
6 time accrued under this subsection for any reason unless use of the
7 compensatory time for the period requested will unduly disrupt the
8 operations of the employer.

9 (h) Unless prohibited by a collective bargaining agreement, an
10 employer may terminate a compensatory time plan upon not less than
11 60 days' notice to employees.

12 (i) As used in this subsection:

13 (i) "Compensatory time" and "compensatory time off" mean hours
14 during which an employee is not working and for which the employee
15 is compensated in accordance with this subsection in lieu of
16 monetary overtime compensation.

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

19 (iii) "Overtime compensation" means the compensation required
20 under this section.

21 Sec. 4b. (1) An employer may pay a new employee who is less
22 than 20 years of age a training hourly wage of \$4.25 for the first
23 90 days of that employee's employment. The hourly wage authorized
24 under this subsection is in lieu of the minimum hourly wage
25 otherwise prescribed by this act.

26 (2) Except as provided in subsection (1), the minimum hourly
27 wage for an employee who is less than <<18 years of age is 85% of the
general minimum hourly wage established in section 4.>>

1 (3) An employer shall not displace an employee to hire an
2 individual at the hourly wage authorized under this section. As
3 used in this subsection, "displace" includes termination of
4 employment or any reduction of hours, wages, or employment
5 benefits.

6 (4) A person who violates subsection (3) is subject to a civil
7 fine of not more than \$1,000.00.

8 Sec. 4c. On petition of a party in interest or on his or her
9 own initiative, the commissioner shall establish a suitable scale
10 of rates for apprentices, learners, and persons with physical or
11 mental disabilities who are clearly unable to meet normal
12 production standards. The rates established under this section may
13 be less than the regular minimum wage rate for workers who are
14 experienced and who are not disabled.

15 Sec. 4d. (1) Except as provided in subsection (2), before
16 September 1, 2014, the minimum hourly wage rate is \$2.65 per hour;
17 beginning September 1, 2014, the minimum hourly wage rate is \$3.10;
18 beginning January 1, 2015, the minimum hourly wage rate is \$3.23;
19 beginning January 1, 2016, the minimum hourly wage rate is \$3.36;
20 and beginning January 1, 2017, the minimum hourly wage rate is
21 \$3.50, if all of the following occur:

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

24 (b) If the gratuities described in subdivision (a) plus the
25 minimum hourly wage rate under this subsection do not equal or
26 exceed the minimum hourly wage otherwise established under section
27 4, the employer pays any shortfall to the employee.

1 (c) The gratuities are proven gratuities as indicated by the
2 employee's declaration for federal insurance contribution act
3 purposes.

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

6 (2) Every October beginning in October 2017, the wage and
7 hours division of the department of licensing and regulatory
8 affairs shall calculate an adjusted minimum wage rate for employees
9 described in subsection (1). The adjusted rate shall be calculated
10 by multiplying the otherwise applicable minimum wage by the
11 percentage increase, if any, in the most comprehensive index of
12 consumer prices available for the Detroit area from the United
13 States department of labor, bureau of labor statistics, for the
14 most recent 12-month period for which data are available. The
15 adjusted minimum wage rate shall be posted on the department's
16 website by November 1 of the year it is calculated and is effective
17 beginning January 1 of the succeeding year.

18 (3) An increase in the minimum hourly wage rate as prescribed
19 in subsection (1) or (2) does not take effect if at any time during
20 the year preceding the year of a prescribed increase, the
21 unemployment rate for this state is greater than 10%.

22 (4) As used in this section, "gratuities" means tips or
23 voluntary monetary contributions received by an employee from a
24 guest, patron, or customer for services rendered to that guest,
25 patron, or customer and that the employee reports to the employer
26 for purposes of the federal insurance contributions act, 26 USC
27 3101 to 3128.

1 Sec. 5. (1) The governor shall appoint, with the advice and
2 consent of the senate, a wage deviation board composed of 3
3 representatives of the employers, 3 representatives of the
4 employees, and 3 persons representing the public. One of the 3
5 persons representing the public shall be designated as chairperson.
6 Members shall serve for terms of 3 years, except that of the
7 members first appointed, 1 from each group shall be appointed for 1
8 year, 1 for 2 years, and 1 for 3 years. The commissioner shall be
9 secretary of the wage deviation board.

10 (2) A majority of the members of the board constitute a
11 quorum, and the recommendation or report of the board requires a
12 vote of not less than a majority of its members. The business which
13 the wage deviation board may perform shall be conducted at a public
14 meeting of the board held in compliance with the open meetings act,
15 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date,
16 and place of the meeting shall be given in the manner required by
17 that act.

18 (3) A writing prepared, owned, used, in the possession of, or
19 retained by the wage deviation board in the performance of an
20 official function shall be made available to the public in
21 compliance with the freedom of information act, 1976 PA 442, MCL
22 15.231 to 15.246.

23 (4) The per diem compensation of the board and the schedule
24 for reimbursement of expenses shall be established annually by the
25 legislature.

26 (5) The wage deviation board may request data of any employer,
27 subject to the provisions of this act, as to the wages paid and

1 hours worked by the employer's employees and may hold hearings as
2 necessary in the process of obtaining this information.

3 (6) The wage deviation board shall submit its report to the
4 commissioner, who shall file it in his or her office as a public
5 record together with the regulations established by the board.

6 (7) At any time after a deviated wage rate has been in effect
7 for 6 months or more, the wage deviation board may reconsider the
8 rate.

9 Sec. 6. The commissioner may promulgate rules necessary for
10 administration of this act under the administrative procedures act
11 of 1969, 1969 PA 306, MCL 24.201 to 24.328.

12 Sec. 7. An employer who is subject to this act or any
13 regulation or order issued under this act shall furnish each
14 employee with a statement of the hours worked by the employee and
15 of the wages paid to the employee, listing deductions made each pay
16 period. The employer shall furnish the commissioner, upon demand, a
17 sworn statement of the wage information. These records shall be
18 open to inspection by the commissioner, his or her deputy, or any
19 authorized agent of the department at any reasonable time. An
20 employer subject to this act or any regulation or order issued
21 under this act shall keep a copy of this act and regulations and
22 orders promulgated under this act posted in a conspicuous place in
23 the workplace that is accessible to employees. The commissioner
24 shall furnish copies of this act and the regulations and orders to
25 employers without charge.

26 Sec. 8. The commissioner shall administer and enforce this act
27 and, at the request of the wage deviation board, may investigate

1 and ascertain the wages of employees of an employer subject to this
2 act. The commissioner and the commissioner's employees shall not
3 reveal facts or information obtained in the course of official
4 duties, except as when required by law, to report upon or take
5 official action or testify in proceedings regarding the affairs of
6 an employer subject to this act.

7 Sec. 9. (1) If an employer violates this act, the employee
8 affected by the violation, at any time within 3 years, may do any
9 of the following:

10 (a) Bring a civil action for the recovery of the difference
11 between the amount paid and the amount that, but for the violation,
12 would have been paid the employee under this act and an equal
13 additional amount as liquidated damages together with costs and
14 reasonable attorney fees as are allowed by the court.

15 (b) File a claim with the commissioner who shall investigate
16 the claim.

17 (2) If the commissioner determines there is reasonable cause
18 to believe that the employer has violated this act and the
19 commissioner is subsequently unable to obtain voluntary compliance
20 by the employer within a reasonable period of time, the
21 commissioner shall bring a civil action under subsection (1)(a).
22 The commissioner may investigate and file a civil action under
23 subsection (1)(a) on behalf of all employees of that employer who
24 are similarly situated at the same work site and who have not
25 brought a civil action under subsection (1)(a). A contract or
26 agreement between the employer and the employee or any acceptance
27 of a lesser wage by the employee is not a bar to the action.

1 (3) In addition to bearing liability for civil remedies
2 described in this section, an employer who fails to pay the minimum
3 hourly wage in violation of this act, or who violates a provision
4 of section 4a governing an employee's compensatory time, is subject
5 to a civil fine of not more than \$1,000.00.

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

13 (a) Section 4a does not apply.

14 (b) This act does not apply to an employee who is exempt from
15 the minimum wage requirements of the fair labor standards act of
16 1938, 29 USC 201 to 219.

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

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

26 (b) He or she is employed to provide child care, but is not a
27 live-in domestic service employee as described in 29 CFR 552.102.

1 However, the requirements of sections 4 and 4a do not apply if the
2 employee meets all of the following conditions:

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

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

6 (iii) He or she provides services that do not regularly exceed
7 20 hours per week, in the aggregate.

8 (3) This act does not apply to persons employed in summer
9 camps for not more than 4 months or to employees who are covered
10 under section 14 of the fair labor standards act of 1938, 29 USC
11 214.

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

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

1 Sec. 11. An employer that discharges or in any other manner
2 discriminates against an employee because the employee has served
3 or is about to serve on the wage deviation board or has testified
4 or is about to testify before the board, or because the employer
5 believes that the employee may serve on the board or may testify
6 before the board or in any investigation under this act, and any
7 person who violates any provision of this act or of any regulation
8 or order issued under this act, is guilty of a misdemeanor.

9 Sec. 12. Any employer that consistently discharges employees
10 within 10 weeks of their employment and replaces the discharged
11 employees without work stoppage is presumed to have discharged them
12 to evade payment of the wage rates established in this act and is
13 guilty of a misdemeanor.

14 Sec. 13. (1) An employer having employees subject to this act
15 shall not discriminate between employees within an establishment on
16 the basis of sex by paying wages to employees in the establishment
17 at a rate less than the rate at which the employer pays wages to
18 employees of the opposite sex for equal work on jobs, the
19 performance of which requires equal skill, effort, and
20 responsibility and that is performed under similar working
21 conditions, except if the payment is made under 1 or more of the
22 following:

23 (a) A seniority system.

24 (b) A merit system.

25 (c) A system that measures earnings by quantity or quality of
26 production.

27 (d) A differential based on a factor other than sex.

1 (2) An employer that is paying a wage differential in
2 violation of this section shall not reduce the wage rate of an
3 employee to comply with this section.

4 (3) For purposes of administration and enforcement, any amount
5 owing to an employee that has been withheld in violation of this
6 section is considered unpaid minimum wages under this act.

7 Sec. 14. An employer operating a massage establishment as
8 defined in section 2 of former 1974 PA 251 that violates this act
9 is guilty of a misdemeanor punishable by imprisonment for not more
10 than 1 year or a fine of not more than \$1,000.00, or both.

11 Enacting section 1. The minimum wage law of 1964, 1964 PA 154,
12 MCL 408.381 to 408.398, is repealed.