

HOUSE BILL NO. 6479

December 02, 2020, Introduced by Rep. LaGrand and referred to the Committee on Commerce and Tourism.

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

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4a. (1) Except as otherwise provided in this act, an
2 employee ~~shall~~**must** receive compensation at ~~not~~**both of the**
3 **following rates:**

4 **(a) Not** less than 1-1/2 times the regular rate at which the
5 employee is employed for employment in a workweek in excess of 40
6 hours.

1 (b) If the employee's employer has more than 50 employees, not
 2 less than 2 times the regular rate at which the employee is
 3 employed for employment on all of the following federal holidays:

4 (i) New Year's Day.

5 (ii) Memorial Day.

6 (iii) Independence Day.

7 (iv) Labor Day.

8 (v) Thanksgiving Day.

9 (vi) Christmas Day.

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

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

22 (b) For an employee to whom a work period of at least 7 but
 23 less than 28 days applies, in the employee's work period the
 24 employee receives, for tours of duty ~~which~~**that** in the aggregate
 25 exceed a number of hours ~~which~~**that** bears the same ratio to the
 26 number of consecutive days in the employee's work period as 216
 27 bears to 28 days, compensation for those excess hours at a rate not
 28 less than 1-1/2 times the regular rate at which the employee is
 29 employed. The employee's regular rate ~~shall~~**must** be not less than

1 the statutory minimum hourly rate.

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

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

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

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

29 (4) Subsections (1), (2), and (3) do not apply to any of the

1 following:

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

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

14 (c) A political appointee of ~~a person~~ **an individual** holding
 15 public elective office or a political appointee of a public body,
 16 if the political appointee described in this subdivision is not
 17 covered by a civil service system.

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

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

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

25 (ii) **Dairying.**

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

28 (iv) **Raising** livestock, bees, fur-bearing animals, or poultry.

29 ~~; and a~~

1 (v) A practice ~~, including forestry or lumbering operations,~~
 2 performed by a farmer or on a farm as an incident to or in
 3 conjunction with farming operations, including ~~preparation~~ **all of**
 4 **the following:**

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

6 (B) **Preparation** for market. ~~, delivery~~

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

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

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

12 (5) The ~~director of the department of licensing and regulatory~~
 13 ~~affairs~~ **commissioner** shall promulgate rules under the
 14 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
 15 24.328, to define the terms used in subsection (4).

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

19 (7) The legislature shall annually appropriate from the
 20 general fund to each political subdivision affected by subsection
 21 (2) an amount equal to the difference in direct labor costs before
 22 and after ~~the effective date of this act~~ **March 29, 2019** arising
 23 from any change in existing law that results from the enactment of
 24 subsection (2) and incurred by the political subdivision.

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

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

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

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

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

17 (c) The employee is not required as a condition of employment
18 to accept or request compensatory time. An employer shall not
19 directly or indirectly intimidate, threaten, or coerce or attempt
20 to intimidate, threaten, or coerce an employee for the purpose of
21 interfering with the employee's rights under this section to
22 request or not request compensatory time off in lieu of payment of
23 overtime compensation for overtime hours, or requiring an employee
24 to use compensatory time. In assigning overtime hours, an employer
25 shall not discriminate among employees based upon an employee's
26 choice to request or not request compensatory time off in lieu of
27 overtime compensation. An employer who violates this subsection is
28 subject to a civil fine of not more than \$1,000.00.

29 (d) An employee may not accrue more than a total of 240 hours

1 of compensatory time. An employer shall do both of the following:

2 (i) Maintain in an employee's pay record a statement of
3 compensatory time earned by that employee in the pay period that
4 the pay record identifies.

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

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

14 (f) An employee who has earned compensatory time authorized
15 under this subsection ~~shall, must,~~ upon the voluntary or
16 involuntary termination of employment or ~~upon expiration of if~~ this
17 subsection **is no longer in effect**, be paid unused compensatory time
18 at a rate of compensation not less than the regular rate earned by
19 the employee ~~at the time when~~ the employee performed the overtime
20 work. A terminated employee's receipt of or eligibility to receive
21 monetary compensation for earned compensatory time ~~shall must~~ not
22 be used by either of the following:

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

26 (ii) The state to deny unemployment compensation or diminish an
27 employee's entitlement to unemployment compensation benefits under
28 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
29 421.1 to 421.75.

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

5 (h) Unless prohibited by a collective bargaining agreement, an
6 employer may terminate a compensatory time plan upon not less than
7 60 days' notice to employees.

8 (i) As used in this subsection:

9 (i) "Compensatory time" and "compensatory time off" mean hours
10 during which an employee is not working and for which the employee
11 is compensated ~~in accordance with~~ **under** this subsection in lieu of
12 monetary overtime compensation.

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

15 (iii) "Overtime compensation" means the compensation required
16 under this section.