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SFA**BILL ANALYSIS**

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Senate Bill 1 (as enrolled)

PUBLIC ACT 1 of 1997

House Bill 4177 (as enrolled)

PUBLIC ACT 2 of 1997

Sponsor: Senator Loren Bennett (Senate Bill 1)

Representative Bob Emerson (House Bill 4177)

Senate Committee: Human Resources, Labor and Veterans Affairs (Senate Bill 1)

House Committee: Labor and Occupational Safety

Date Completed: 9-3-97

CONTENT**The bills amended the Minimum Wage Law to do the following:**

- Increase the State minimum wage to \$4.75 on May 1, 1997, and to \$5.15 on September 1, 1997.
- Provide that the minimum wage of an employee earning tips is \$2.65 per hour if the tips equal or exceed the difference between \$2.65 and the minimum hourly wage established under the Law.
- Allow an employer to pay a training hourly wage, at a rate lower than the State minimum wage, to a new employee who is less than 20 years old.
- Allow employees to receive compensatory time off instead of a monetary overtime payment.

Senate Bill 1 was tie-barred to House Bill 4177.

Senate Bill 1**Minimum Wage Increases/Compliance**

The State minimum wage previously was set at \$3.35 per hour, which had begun on January 1, 1981. The bill increased the State minimum hourly wage to \$4.75 beginning May 1, 1997, and to \$5.15 beginning September 1, 1997. The bill also deleted a requirement that increases or decreases in the minimum hourly rate, established in the Law after 1967, reflect corresponding increases or decreases in the cost of living.

Previously, the Law provided that if an employer paid any employee an amount less than the State minimum wage, the employee, at any time within three years, could either bring a civil action for the recovery of the difference plus an equal additional amount and reasonable attorney fees, or file a claim with the Commissioner (the Director of the Department of Consumer and Industry Services), who was required to investigate the claim. The bill provides that, if an employer violates the Law, the affected employee may, within three years, bring a civil action to recover the difference between the amount paid and the amount that, but for the violation, would have been paid, plus an equal additional amount and attorney fees, or file a claim with the Commissioner, who is required to investigate.

Under the Law, if the Commissioner determines that there is reasonable cause to believe that the employer has violated the Law and the Commissioner cannot obtain voluntary compliance within a reasonable period of time, he or she is required to bring a civil action as provided above (for an underpaid employee). Under the bill, the Commissioner also may investigate and file a civil action

on behalf of all employees of the employer who are similarly situated at the same work site and who have not brought a civil action as described above.

The bill also provides that, in addition to being liable for civil remedies under these provisions, an employer who fails to pay the minimum hourly wage in violation of the Law, or who violates a provision of the Law governing compensatory time (added by House Bill 4177), is subject to a civil fine of up to \$1,000.

Tip Deduction

The Law previously required the wage deviation board to determine, on its own or on petition of an interested party, the amount of gratuities and the value to an employee of board, lodging, apparel, or other items or services customarily furnished to an employee for the employee's benefit, and establish from that amount a reasonable deduction from the State minimum wage to be paid by the employer. The allowed deduction could not be more than 25% of the hourly wage rate. The bill deleted these provisions.

Previously, an employee's wage could not be reduced because he or she received gratuities unless the gratuities were proven, as indicated by his or her declaration for purposes of the Federal Insurance Contribution Act (FICA), and the employer had informed the employee of the Minimum Wage Law's tip deduction provisions. The bill provides, instead, that the minimum hourly wage rate of an employee must be \$2.65 per hour if all of the following occur:

- The employee receives gratuities in the course of his or her employment.
- The gratuities equal or exceed the difference between \$2.65 per hour and the minimum hourly wage otherwise established under the Law.
- The gratuities are proven as indicated by the employee's declaration for purposes of FICA.
- The employer informed the employee of the Minimum Wage Law's tip deduction provisions.

The bill defines "gratuities" as tips or voluntary monetary contributions received by an employee from a guest, patron, or customer for services rendered to that guest, patron, or customer and that the employee reports to the employer for purposes of FICA.

Training Hourly Wage

The bill allows an employer to pay a training hourly wage of \$4.25 for the first 90 days of employment to a new employee who is under 20. The training hourly wage is in lieu of the otherwise applicable State minimum wage.

An employer may not displace an employee to hire someone at the training hourly wage. "Displace" includes the termination of employment or any reduction of hours, wages, or employment benefits. A person who violates this prohibition is subject to a maximum civil fine of \$1,000.

House Bill 4177

Under the bill, an employee who is subject to the Minimum Wage Law may choose to receive compensatory time off, rather than overtime pay, at a rate of not less than 1.5 hours for each hour of employment for which overtime compensation is required under the Law, subject to all of the provisions described below.

The employer must allow employees a total of at least 10 days of leave per year without loss of pay and provide the compensatory time to the employee only pursuant to either of the following:

- Applicable provisions of a collective bargaining agreement, a memorandum of understanding, or any other written agreement between the employer and the representative of the employee.
- If employees are not represented by a collective bargaining agent or other representative

designated by the employee, a plan adopted by the employer and provided in writing to its employees that gives them a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary written request to the employer by an individual employee for compensatory time off in lieu of overtime pay before the performance of any overtime assignment.

An employee may not be required as a condition of employment to accept or request compensatory time. An employer may not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with his or her right to request or not request compensatory time off in lieu of payment of overtime compensation or for the purpose of requiring an employee to use compensatory time. In assigning overtime hours, an employer may not discriminate among employees based upon an employee's choice to request or not request compensatory time off in lieu of overtime compensation. An employer who violates these prohibitions is subject to a civil fine of up to \$1,000.

An employee may not accrue more than 240 hours of compensatory time. An employer must maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identifies. An employer also must give an employee a record of compensatory time earned by or paid to the employee in a statement of earnings for the period in which the compensatory time is earned or paid.

Within 30 days after receiving a request of an employee who has earned compensatory time, an employer must provide monetary compensation for that compensatory time at a rate of at least the regular rate earned by the employee at the time he or she performed the overtime work.

Upon the voluntary or involuntary termination of employment or upon expiration of these provisions, an employee who has earned compensatory time must be paid unused compensatory time at a rate of at least the regular rate earned by the employee at the time he or she performed the overtime work. A terminated employee's receipt of or eligibility to receive monetary compensation for earned compensatory time may not be used by the employer to oppose an employee's application for unemployment compensation, or by the State to deny unemployment compensation or diminish an employee's entitlement to unemployment compensation benefits.

An employee must be permitted to use any accrued compensatory time for any reason unless use of the time for the period requested will unduly disrupt the employer's operations.

Unless prohibited by a collective bargaining agreement, an employer may terminate a compensatory time plan upon at least 60 days' notice to employees.

MCL 408.382 et al.

Legislative Analyst: S. Lowe

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.