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SFA BILL ANALYSIS

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Senate Bill 1 (Substitute S-1 as passed by the Senate)
Sponsor: Senator Loren Bennett
Committee: Human Resources, Labor and Veterans Affairs

Date Completed: 2-14-97

CONTENT

The bill would amend the Minimum Wage Law to do all of the following:

- **Increase the State minimum wage to $4.75 on July 1, 1997, and to $5.15 on January 1, 1998.**
- **Provide that the minimum wage of an employee earning tips would be $2.52 per hour if the tips equaled or exceeded the difference between $2.52 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 was less than 20 years old.**
- **Allow employees to receive compensatory time off instead of a monetary overtime payment.**

Minimum Wage Increases/Compliance

Currently, the State minimum wage is set at $3.35 per hour, which was established on January 1, 1981. The bill would increase the State minimum hourly wage rate to $4.75 beginning July 1, 1997, and to $5.15 beginning January 1, 1998. The bill also would delete a provision requiring 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.

The Law provides that if an employer pays any employee an amount less than the State minimum wage, the employee, at any time within three years, either may bring a civil action for the recovery of the difference plus an equal additional amount and reasonable attorney fees, or may file a claim with the Commissioner (the Director of the Department of Consumer and Industry Services), who is required to investigate the claim. 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 for an underpaid employee. Under the bill, the Commissioner also could investigate and file a civil action on behalf of all employees of the employer who were similarly situated at the same work site and who had not brought a civil action as described above.

The bill also provides that, in addition to being liability for civil remedies under these provisions, an employer who paid less than the minimum wage would be subject to a civil fine of up to $1,000.

Tip Deduction

The Law requires 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 may not be more than 25% of the hourly wage rate. The bill would delete these provisions.

Currently, an employee's wage may not be reduced because he or she receives gratuities unless the gratuities are proven, as indicated by his or her declaration for purposes of the Federal Insurance Contribution Act (FICA), and the employer has 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 would be $2.52 per hour if all of the following occurred:

-- The employee received gratuities in the course of his or her employment.
-- The gratuities equaled or exceeded the difference between $2.52 per hour and the minimum hourly wage otherwise established under the Law.
-- The gratuities were 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 would define "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 reported to the employer for purposes of FICA.

Training Hourly Wage

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

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

Compensatory Time

The bill would allow an employee to 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. In order for an employee to receive compensatory time, rather than overtime pay, the compensatory time off would have to be provided through either 1) a collective bargaining agreement, or any other written agreement between the employer and the affected employees represented by a collective bargaining agent or other representative designated by the employees; or 2) a written agreement reached between affected employees and their employer before the employees' performance of work, if those employees were not represented by a collective bargaining agent or other designated representative and the agreement or understanding were knowingly and voluntarily entered by the employees. In addition, the affected employee would have to provide written affirmation of his or her election to receive compensatory time in lieu of overtime compensation, and the written affirmation would have to be preserved and maintained by the employer.

An employer could not directly or indirectly intimidate, threaten, or coerce or attempt to intimidate, threaten, or coerce an employee for the purpose of interfering with the employee's 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 could 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 violated these prohibitions would be subject to a civil fine of up to $1,000.

An employer would have to maintain in an employee's pay record a statement of compensatory time earned by that employee in the pay period that the pay record identified. An employer also would have to 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 was earned or paid.

Upon giving an employer at least 30 days' written notice, an employee could designate the period in which he or she elected to receive payment for compensatory time that he or she had accrued. Payment of compensatory time would have to be at the employee's regular pay rate in effect on the date of the compensatory time payment. Upon the voluntary or involuntary termination of an employee's employment, an employer would have to pay to the employee all compensatory time that he or she had accrued. An employer could not reduce an employee's wage rate to minimize payment of compensatory time accrued to him or her.

MCL 408.382 et al. Legislative Analyst: S. Margules

FISCAL IMPACT

Given that a new Federal minimum wage has been recently implemented for many Michigan employees, this bill would affect Michigan small business employees. The fiscal impact for the State for FY 1996-97 would be an increase in income tax collections of $0.3 million, an increase in sales tax collections of $0.3 million, and an increase in other consumption taxes of $0.2 million for a total of $0.8 million in additional State revenue. The fiscal impact for the State for FY 1997-98 would be an increase in income tax collections of $1.3 million, an increase in sales tax collections of $1.6 million, and an increase in other consumption taxes of $0.8 million for a total of approximately $3.6 million in additional State revenue. These revenue increases would be lower if the number of minimum wage jobs decreased or employees selected compensatory time off for overtime.
According to the Department of Consumer and Industry Services, there may be some additional administrative costs associated with this bill. Due to the changes addressing overtime compensation, the Department would have to promulgate rules and there could be additional complaints filed, which could increase the workload for the complaint and investigation staff.

In addition, the language allowing the Commissioner to bring a civil action could require additional staff to perform the administrative duties associated with these suits. The Department estimates that each additional position would increase costs by approximately $40,000 annually.

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