House
Legislative
Analysis
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AMEND "COMP" TIME PROVISIONS

House Bill 5262 (Substitute H-1)
First Analysis (3-7-00)

Sponsor: Rep. Susan Tabor
Committee: Employment Relations, Safety, and Training

THE APPARENT PROBLEM:

Michigan's Minimum Wage Law of 1964 in many respects mirrors the federal Fair Labor Standards Act (FLSA) of 1938. (See BACKGROUND INFORMATION.) The state law specifically does not cover employers or employees subject to the federal law, which basically applies to state and federal employees and to businesses engaged in interstate commerce or who gross more than half a million dollars a year. The state law covers all employees not covered under the federal law, which, according to House committee testimony, amounts to some 42,000 Michigan employers.

In addition to specifying a minimum wage, the Minimum Wage Law also requires that employees receive compensation at not less than one and one-half times their regular pay whenever the employee works more than 40 hours in a work week. Instead of overtime pay, however, the act allows employees to receive compensatory time off -- at a rate of not less than one-and-one-half hours for each hour of overtime employment -- subject to certain conditions. One of these conditions requires employers to allow employees a total of at least 10 days of leave a year without loss of pay and to provide the compensatory time to the employees under either a) applicable provisions of a written agreement (such as a collective bargaining agreement or a memorandum of understanding) between the employer and an employee representative; or b) for employees not represented by a collective bargaining agent (or other representative designated by the employee), a plan adopted by the employer (and provided to the employees) that provides employees with a voluntary option to receive compensatory time off for overtime work when there is an express, voluntary request to the employer by the employee, before performing any overtime assignment, for compensatory time off instead of overtime pay.

In addition, the act prohibits employees from accumulating more than 240 hours of comp time in any one year, and it prohibits employers from requiring, as a condition of employment, that an employee accept or request comp time. Employers also are prohibited from discriminating among employees based on an employee's decision to request or not request comp time instead of overtime pay, nor can employers try to intimidate, threaten, or coerce employees to require an employee to use comp time or interfere with an employee's rights under the act to request or not request comp time off instead of overtime pay. Employers who violate the act's provisions with regard to overtime pay and comp time are subject to civil fines of up to $1,000.

Some people believe that there needs to be more flexibility for both employers and employees with regard to comp time provisions at both the state and federal levels, and legislation to amend the state law has been introduced.

THE CONTENT OF THE BILL:

The bill would amend the Minimum Wage Law of 1964 to do the following:

(1) Rewrite the provisions regarding non-unionized employees to say that an employer could provide compensatory time to an employee under an express, voluntary written "agreement" between the individual employee and the employer (instead of a "plan" adopted by the employer and provided in writing to its employees that provides employees with a voluntary option to receive comp time off for overtime work), and would delete the current provision that requires the individual employee to make an express, voluntary written request to the employer for comp time off instead of overtime pay before doing any overtime work.

(2) Clarify the current provision concerning comp time and conditions of employment. In addition to saying, as currently, that the employee is not required as a condition of employment to accept or request comp time, the bill would add that an employee also would

not be required as a condition of employment to "execute any agreement pertaining to compensatory time."

(3) Add that if the use of comp time would unduly disrupt the employer's operation and was denied, the employee would be entitled to receive monetary compensation instead of comp time.

(4) Require employers to give 60 days' written notice (instead of just "notice") to employees before terminating a comp time plan [Note: the bill would delete reference to employer comp time "plans"].

(5) Grant comp time in the order in which it was accrued, if an employer granted an employee's request for comp time off.

(6) Calculate monetary overtime compensation based on the order in which it was accrued, if an employee requested monetary compensation for accrued comp time.

MCL 408.384a

BACKGROUND INFORMATION:

Federal wage-hour laws. There are a number of federal laws setting wage-hour standards for employees engaged in interstate commerce or government contract work. The Fair Labor Standards Act (see below) establishes minimum wage, overtime, and child labor standards for employees engaged in interstate commerce or the production of goods for interstate commerce. It was amended in 1963 to forbid wage differential based solely on sex, effective June 1964.

The Walsh-Healey Act establishes similar standards for employees working on government supply contracts. The Davis-Bacon, Contract Work Hours Standards, and Copeland Antikickbacks Acts establish minimum wage, fringe benefit, and overtime standards for employees working on government-financed construction projects. The Services Contracts Act of 1965 requires employers performing service contracts for government agencies to pay their employees not less than the minimum wages and fringe benefits found by the Secretary of Labor to be prevailing locally. In no event may the employers pay their employees less than the minimum wage under the Fair Labor Standards Act.

The federal Fair Labor Standards Act (FLSA). In 1938, Congress passed and President Franklin Roosevelt signed a federal wage and hour law called the Fair Labor Standards Act (FLSA). The FLSA established standards for minimum wages, overtime (the amount of time worked in excess of 40 hours a week), and child labor. The Wage and Hour Division (Wage-Hour Office) of the U.S. Department of Labor administers and enforces the FLSA. Enforcement of the FLSA is carried out by wage-hour compliance officers.

With regard specifically to overtime, under the FLSA overtime must be paid at a rate of at least 1½ times the employee's regular rate of pay for each hour worked in a workweek in excess of 40 hours. The Wage-Hour Office also provides regulations for employers to guide them in the calculation of overtime for piecework and salaried employees.

Workers at enterprises engaged in interstate commerce are covered by the FLSA, which also has been amended to cover domestic service workers, including day workers such as housekeepers, chauffeurs, cooks, and full-time babysitters. The federal act applies to most federal employees as well as to state and local government workers.

Workers exempt from both the minimum wage and overtime provisions of the federal law include executive, administrative, and professional employees and outside sales persons, as well as employees of certain small farmers and casual baby-sitters.

Workers exempt from the overtime pay provision include certain highly paid commissioned employees of retail and service businesses, and also farm workers and domestic service workers residing in their employers' homes.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would clarify several provisions in the current state law regarding comp time, including requiring that employer terminations of comp time plans be made in writing, requiring an employer who denied a comp time request to pay the employee monetary compensation in lieu of comp time, requiring that comp time be granted in the order in which it was accrued, and requiring that monetary compensation for accrued comp time be based on the order in which it was accrued. In addition, the bill also would clarify that execution of a comp time agreement could not be a condition of work.

Against:

Some people believe the bill doesn't go far enough, though reasons for this belief differ. Some employers believe that the current requirement that they offer at least ten days' paid leave before they can offer comp time plans should be eliminated, while others, mainly from the employees' perspective, believe that any comp time granted should be granted at an employee's current rate of pay rather than the rate of pay when the comp time was accrued.

POSITIONS:

The Michigan Chamber of Commerce supports the bill. (3-6-00)

The Department of Consumer and Industry Services supports the concept of employee choice with regard to compensatory time. (3-7-00)

Analyst: S. Ekstrom

■This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.