

HOUSE BILL No. 4236

February 14, 2001, Introduced by Rep. Tabor and referred to the Committee on Employment Relations, Training and Safety.

A bill to amend 1964 PA 154, entitled
"Minimum wage law of 1964,"
by amending section 4a (MCL 408.384a), as amended by 1997 PA 2.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

5 (2) ~~The~~ THIS state or a political subdivision, agency, or
6 instrumentality of ~~the~~ THIS state does not violate subsection
7 (1) with respect to the employment of an employee in fire protec-
8 tion activities or an employee in law enforcement activities,
9 including security personnel in correctional institutions, if any
10 of the following ~~applies~~ APPLY:

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

7 (b) For an employee to whom a work period of at least 7 but
8 less than 28 days applies, in the employee's work period the
9 employee receives for tours of duty, which in the aggregate
10 exceed a number of hours which bears the same ratio to the number
11 of consecutive days in the employee's work period as 216 bears to
12 28 days, compensation for those excess hours at a rate not less
13 than 1-1/2 times the regular rate at which the employee is
14 employed. The employee's regular rate shall be not less than the
15 statutory minimum hourly rate.

16 (c) If an employee engaged in fire protection activities
17 would receive overtime payments under this act solely as a result
18 of that employee's trading of time with another employee pursuant
19 to a voluntary trading time arrangement, overtime, if any, shall
20 be paid to employees who participate in the trading of time as if
21 the time trade had not occurred. As used in this subdivision,
22 "trading time arrangement" means a practice under which employees
23 of a fire department voluntarily substitute for one another to
24 allow an employee to attend to personal matters, which practice
25 is neither for the convenience of the employer nor because of the
26 employer's operations.

1 (3) The state or a political subdivision, agency, or
2 instrumentality of the state engaged in the operation of a
3 hospital or an establishment that is an institution primarily
4 engaged in the care of the sick, the aged, or the mentally ill or
5 defective who reside on the premises does not violate subsection
6 (1) if both of the following conditions are met:

7 (a) Pursuant to a written agreement or written employment
8 policy arrived at between the employer and the employee before
9 performance of the work, a work period of 14 consecutive days is
10 accepted instead of the workweek of 7 consecutive days for pur-
11 poses of overtime computation.

12 (b) For the employee's employment in excess of 8 hours in a
13 workday and in excess of 80 hours in the 14-day period, the
14 employee receives compensation at a rate of 1-1/2 times the regu-
15 lar rate, which rate shall be not less than the statutory minimum
16 hourly rate at which the employee is employed.

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

19 (a) An employee employed in a bona fide executive, adminis-
20 trative, or professional capacity, including an employee employed
21 in the capacity of academic administrative personnel or teacher
22 in an elementary or secondary school. However, an employee of a
23 retail or service establishment is not excluded from the defini-
24 tion of employee employed in a bona fide executive or administra-
25 tive capacity because of the number of hours in the employee's
26 workweek which the employee devotes to activities not directly or
27 closely related to the performance of executive or administrative

1 activities, if less than 40% of the employee's hours in the
2 workweek are devoted to those activities.

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

4 (c) A political appointee of a person holding public elec-
5 tive office or a political appointee of a public body, if the
6 political appointee described in this subdivision is not covered
7 by a civil service system.

8 (d) An employee employed by an establishment which is an
9 amusement or recreational establishment, if the establishment
10 does not operate for more than 7 months in a calendar year.

11 (e) An employee employed in agriculture, including farming
12 in all its branches, which among other things includes: the cul-
13 tivation and tillage of the soil; dairying; the production, cul-
14 tivation, growing, and harvesting of agricultural or horticul-
15 tural commodities; the raising of livestock, bees, fur-bearing
16 animals, or poultry; and a practice, including forestry or lum-
17 bering operations, performed by a farmer or on a farm as an inci-
18 dent to or in conjunction with farming operations, including
19 preparation for market, delivery to storage, or delivery to
20 market or to a carrier for transportation to market or the pro-
21 cessing or preserving of perishable farm products.

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

24 (5) The director of the department of consumer and industry
25 services shall promulgate rules pursuant to the administrative
26 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to
27 define the terms used in subsection (4).

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

4 (7) The legislature shall annually appropriate from the gen-
5 eral fund to each political subdivision affected by subsection
6 (2) an amount equal to the difference in direct labor costs
7 before and after January 4, 1979 which arises from any change in
8 existing law resulting from the enactment of subsection (2) and
9 incurred by each such political subdivision.

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

15 (a) The employer ~~allows employees a total of at least 10~~
16 ~~days of leave per year without loss of pay and~~ provides the com-
17 pensatory time to the employee only pursuant to either of the
18 following:

19 (i) Applicable provisions of a collective bargaining agree-
20 ment, memorandum of understanding, or any other written agreement
21 between the employer and representative of the employee.

22 (ii) ~~If employees are not represented by a collective bar-~~
23 ~~gaining agent or other representative designated by the employee,~~
24 ~~a plan adopted by the employer and provided in writing to its~~
25 ~~employees that provides employees with a voluntary option to~~
26 ~~receive compensatory time off for overtime work when there is an~~
27 ~~AN express, voluntary written request to the employer by an~~

1 ~~individual employee for~~ AGREEMENT BETWEEN THE INDIVIDUAL
2 EMPLOYEE AND THE EMPLOYER TO PROVIDE compensatory time off in
3 lieu of overtime pay. ~~before the performance of any overtime~~
4 ~~assignment.~~

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

7 (c) The employee is not required as a condition of employ-
8 ment to accept or request compensatory time OR TO EXECUTE ANY
9 AGREEMENT PERTAINING TO COMPENSATORY TIME. An employer shall not
10 directly or indirectly intimidate, threaten, or coerce or attempt
11 to intimidate, threaten, or coerce an employee for the purpose of
12 interfering with the employee's rights under this section to
13 request or not request compensatory time off in lieu of payment
14 of overtime compensation for overtime hours, or requiring an
15 employee to use compensatory time. In assigning overtime hours,
16 an employer shall not discriminate among employees based upon an
17 employee's choice to request or not request compensatory time off
18 in lieu of overtime compensation. An employer who violates this
19 subsection is subject to a civil fine of not more than
20 \$1,000.00.

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

24 (i) Maintain in an employee's pay record a statement of com-
25 pensatory time earned by that employee in the pay period that the
26 pay record identifies.

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

4 (e) Upon the request of an employee who has earned compensa-
5 tory time, the employer shall, within 30 days following the
6 request, provide monetary compensation for ~~that~~ ALL ACCRUED
7 compensatory time at ~~a rate not less than the regular rate~~
8 ~~earned by the employee~~ THE EMPLOYEE'S RATE OF PAY at the time
9 the employee performed ~~the~~ UNCOMPENSATED overtime work.

10 (f) An employee who has earned compensatory time authorized
11 under this subsection shall, upon the voluntary or involuntary
12 termination of employment or upon expiration of this subsection,
13 be paid unused compensatory time at ~~a~~ THE EMPLOYEE'S rate of
14 compensation ~~not less than the regular rate earned by the~~
15 ~~employee~~ at the time the employee performed ~~the~~ UNCOMPENSATED
16 overtime work. A terminated employee's receipt of or eligibility
17 to receive monetary compensation for earned compensatory time
18 shall not be used by either of the following:

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

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

26 (g) An employee shall be permitted to use ~~any~~ compensatory
27 time accrued under this subsection for any reason ~~unless~~ IF use

1 of the compensatory time ~~for the period requested will~~ DOES NOT
2 unduly disrupt the operations of the employer. IF USE OF COMPEN-
3 SATORY TIME DOES UNDULY DISRUPT THE OPERATIONS OF THE EMPLOYER
4 AND IS DENIED, THE EMPLOYEE IS ENTITLED TO RECEIVE MONETARY COM-
5 PENSATION IN LIEU OF COMPENSATORY TIME OFF.

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

9 (i) As used in this subsection:

10 (i) "Overtime compensation" means the compensation required
11 under THIS section. ~~4a.~~

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

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