

SENATE BILL No. 1123

September 26, 2018, Introduced by Senator ANANICH and referred to the Committee on Commerce.

A bill to amend 2014 PA 138, entitled
"Workforce opportunity wage act,"
by amending section 4a (MCL 408.414a).

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 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) This state or a political subdivision, agency, or
6 instrumentality of this state does not violate subsection (1) with
7 respect to the employment of an employee in fire protection
8 activities or an employee in law enforcement activities, including
9 security personnel in correctional institutions, if any of the
10 following 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 not
4 less than 1-1/2 times the regular rate at which the employee is
5 employed. The employee's regular rate ~~shall~~**MUST** 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 exceed
10 a number of hours which bears the same ratio to the number of
11 consecutive days in the employee's work period as 216 bears to 28
12 days, compensation for those excess hours at a rate not less than
13 1-1/2 times the regular rate at which the employee is employed. The
14 employee's regular rate ~~shall~~**MUST** be not less than the statutory
15 minimum hourly rate.

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

27 (3) This state or a political subdivision, agency, or

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

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

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

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

18 (a) An employee employed in a bona fide executive,
19 administrative, or professional capacity, including an employee
20 employed in the capacity of academic administrative personnel or
21 teacher in an elementary or secondary school. However, an employee
22 of a retail or service establishment is not excluded from the
23 definition of employee employed in a bona fide executive or
24 administrative capacity because of the number of hours in the
25 employee's workweek that the employee devotes to activities not
26 directly or closely related to the performance of executive or
27 administrative activities, if less than 40% of the employee's hours

1 in the workweek are devoted to those activities. **THE EXEMPTION FROM**
2 **PAYMENT OF OVERTIME COMPENSATION UNDER THIS SUBDIVISION DOES NOT**
3 **APPLY IF THE EMPLOYEE RECEIVES REGULAR RATE COMPENSATION AT LESS**
4 **THAN \$913.00 PER WEEK.**

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

6 (c) A political appointee of a person holding public elective
7 office or a political appointee of a public body, if the political
8 appointee described in this subdivision is not covered by a civil
9 service system.

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

13 (e) An employee employed in agriculture, including farming in
14 all its branches, which among other things includes: cultivating
15 and tilling soil; dairying; producing, cultivating, growing, and
16 harvesting agricultural or horticultural commodities; raising
17 livestock, bees, fur-bearing animals, or poultry; and a practice ~~7~~
18 ~~including forestry or lumbering operations,~~ performed by a farmer
19 or on a farm as an incident to or in conjunction with farming
20 operations, including **FORESTRY OR LUMBERING OPERATIONS OR**
21 preparation for market, delivery to storage, or delivery to market
22 or to a carrier for transportation to market or processing or
23 preserving perishable farm products.

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

26 (5) ~~The director of the department of licensing and regulatory~~
27 ~~affairs~~ **COMMISSIONER** shall promulgate rules under the

1 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
2 24.328, to define the terms used in subsection (4).

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

6 (7) The legislature shall annually appropriate from the
7 general fund to each political subdivision affected by subsection
8 (2) an amount equal to the difference in direct labor costs before
9 and after the effective date of this act arising from any change in
10 existing law that results from the enactment of subsection (2) and
11 incurred by the political subdivision.

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

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

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

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

1 express, voluntary written request to the employer by an individual
2 employee for compensatory time off in lieu of overtime pay before
3 the performance of any overtime assignment.

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

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

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

20 (i) Maintain in an employee's pay record a statement of
21 compensatory time earned by that employee in the pay period that
22 the pay record identifies.

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

26 (e) Upon the request of an employee who has earned
27 compensatory time, the employer shall, within 30 days following the

1 request, provide monetary compensation for that compensatory time
2 at a rate not less than the regular rate earned by the employee at
3 the time the employee performed the overtime work.

4 (f) An employee who has earned compensatory time authorized
5 under this subsection ~~shall~~, **MUST**, upon the voluntary or
6 involuntary termination of employment or ~~upon expiration of~~ **IF** this
7 subsection **IS NO LONGER IN EFFECT**, be paid unused compensatory time
8 at a rate of compensation not less than the regular rate earned by
9 the employee at the time the employee performed the overtime work.

10 A terminated employee's receipt of or eligibility to receive
11 monetary compensation for earned compensatory time ~~shall~~ **MUST** not
12 be used by either of the following:

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

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

20 (g) An employee ~~shall~~ **MUST** be permitted to use any
21 compensatory time accrued under this subsection for any reason
22 unless use of the compensatory time for the period requested will
23 unduly disrupt the operations of the employer.

24 (h) Unless prohibited by a collective bargaining agreement, an
25 employer may terminate a compensatory time plan upon not less than
26 60 days' notice to employees.

27 (i) As used in this subsection:

1 (i) "Compensatory time" and "compensatory time off" mean hours
2 during which an employee is not working and for which the employee
3 is compensated in accordance with this subsection in lieu of
4 monetary overtime compensation.

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

7 (iii) "Overtime compensation" means the compensation required
8 under this section.

9 Enacting section 1. This amendatory act takes effect 90 days
10 after the date it is enacted into law.