

HOUSE BILL No. 4436

March 20, 2003, Introduced by Reps. Milosch, Drolet, Pastor, Acciavatti, LaJoy, Hoogendyk, Sheen, Garfield, Wenke, Brandenburg, Robertson, Caswell, Palmer, Caul, Ruth Johnson, Bradstreet, Tabor, Stahl, Taub, Amos, Stakoe, Hummel and Casperson 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
 8 protection activities or an employee in law enforcement
 9 activities, including security personnel in correctional
 10 institutions, if any of the following ~~applies~~ **apply**:

11 (a) In a work period of 28 consecutive days, the employee

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

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

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

26 (3) ~~The~~ **This** state or a political subdivision, agency, or
27 instrumentality of ~~the~~ **this** state engaged in the operation of a

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

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

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

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

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

1 activities.

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

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

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

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

22 (f) An employee who is not subject to the minimum hourly wage
23 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 amount
2 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
5 general 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~~ **that** arises from any
8 change in existing law resulting from the enactment of subsection
9 (2) and 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 days
16 of leave per year without loss of pay and provides the
17 compensatory time to the employee only pursuant to either of the
18 following:

19 (i) Applicable provisions of a collective bargaining
20 agreement, memorandum of understanding, or any other written
21 agreement between the employer and representative of the
22 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~~
26 ~~to its employees that provides employees with a voluntary option~~
27 ~~to receive compensatory time off for overtime work when there is~~

1 ~~an~~ **An** express, voluntary written ~~request to the employer by an~~
2 ~~individual employee for~~ **agreement between the individual**
3 **employee and the employer to provide** compensatory time off in
4 lieu of overtime pay. ~~before the performance of any overtime~~
5 ~~assignment.~~

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

8 (c) The employee is not required as a condition of employment
9 to accept or request compensatory time **or to execute any**
10 **agreement pertaining to compensatory time.** An employer shall not
11 directly or indirectly intimidate, threaten, or coerce or attempt
12 to intimidate, threaten, or coerce an employee for the purpose of
13 interfering with the employee's rights under this section to
14 request or not request compensatory time off in lieu of payment
15 of overtime compensation for overtime hours, or requiring an
16 employee to use compensatory time. In assigning overtime hours,
17 an employer shall not discriminate among employees based upon an
18 employee's choice to request or not request compensatory time off
19 in lieu of overtime compensation. An employer who violates this
20 subsection is subject to a civil fine of not more than
21 \$1,000.00.

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

25 (i) Maintain in an employee's pay record a statement of
26 compensatory time earned by that employee in the pay period that
27 the 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
5 compensatory time, the employer shall, within 30 days following
6 the 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~~ **This** state to deny unemployment compensation or
23 diminish an employee's entitlement to unemployment compensation
24 benefits under the Michigan employment security act, 1936 (Ex
25 Sess) PA 1, 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**
3 **compensatory time does unduly disrupt the operations of the**
4 **employer and is denied, the employee is entitled to receive**
5 **monetary compensation in lieu of compensatory time off.**

6 (h) Unless prohibited by a collective bargaining agreement,
7 ~~an~~ **all of the following apply to compensatory time under this**
8 **subsection:**

9 (i) **An** employer may terminate a compensatory time plan upon
10 not less than 60 days' **written** notice to employees.

11 (ii) **If an employer grants an employee's request for**
12 **compensatory time off, the compensatory time shall be granted in**
13 **the order in which it was accrued.**

14 (iii) **If an employee requests monetary compensation for**
15 **accrued compensatory time, the monetary compensation shall be**
16 **calculated based on the order in which the compensatory time was**
17 **accrued.**

18 (i) As used in this subsection:

19 (i) "Overtime compensation" means the compensation required
20 under **this** section. ~~4a.~~

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

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