

HOUSE BILL NO. 5137

June 24, 2021, Introduced by Reps. Steckloff, Aiyash, Scott, Clemente, Breen, Stone, Young, Hood, Haadsma, Morse, Tyrone Carter, Rogers, Sowerby, Pohutsky, Brenda Carter, Cherry, Ellison, Cavanagh, Kuppa, Cynthia Johnson, Brixie, Coleman and Yancey and referred to the Committee on Workforce, Trades, and Talent.

A bill to amend 2018 PA 337, entitled
"Improved workforce opportunity wage act,"
by amending section 4a (MCL 408.934a), as amended by 2018 PA 368.

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

1 instrumentality of this state does not violate subsection (1) with
2 respect to the employment of an employee in fire protection
3 activities or an employee in law enforcement activities, including
4 security personnel in correctional institutions, if any of the
5 following apply:

6 (a) In a work period of 28 consecutive days, the employee
7 receives, for tours of duty ~~, which that~~ in the aggregate exceed
8 216 hours, compensation for those hours in excess of 216 at a rate
9 not less than 1-1/2 times the regular rate at which the employee is
10 employed. The employee's regular rate ~~shall must~~ be not less than
11 the statutory minimum hourly rate.

12 (b) For an employee to whom a work period of at least 7 but
13 less than 28 days applies, in the employee's work period the
14 employee receives, for tours of duty ~~, which that~~ in the aggregate
15 exceed a number of hours which bears the same ratio to the number
16 of consecutive days in the employee's work period as 216 bears to
17 28 days, compensation for those excess hours at a rate not less
18 than 1-1/2 times the regular rate at which the employee is
19 employed. The employee's regular rate ~~shall must~~ be not less than
20 the statutory minimum hourly rate.

21 (c) If an employee engaged in fire protection activities would
22 receive overtime payments under this act solely as a result of that
23 employee's trading of time with another employee pursuant to a
24 voluntary trading time arrangement, overtime, if any, ~~shall must~~ be
25 paid to employees who participate in the trading of time as if the
26 time trade had not occurred. As used in this subdivision, "trading
27 time arrangement" means a practice under which employees of a fire
28 department voluntarily substitute for one another to allow an
29 employee to attend to personal matters, if the practice is neither

1 for the convenience of the employer nor because of the employer's
2 operations.

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

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

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

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

21 (a) ~~An~~**Subject to subsection (9), an** employee employed in a
22 bona fide executive, administrative, or professional capacity,
23 including an employee employed in the capacity of academic
24 administrative personnel or teacher in an elementary or secondary
25 school. However, an employee of a retail or service establishment
26 is not excluded from the definition of employee employed in a bona
27 fide executive or administrative capacity because of the number of
28 hours in the employee's workweek that the employee devotes to
29 activities not directly or closely related to the performance of

1 executive or administrative activities, if less than 40% of the
2 employee's hours in the 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 elective
5 office or a political appointee of a public body, if the political
6 appointee described in this subdivision is not covered by a civil
7 service system.

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

11 (e) An employee employed in agriculture, including farming in
12 all its branches, which ~~among other things includes: cultivating~~
13 **includes, but is not limited to, any of the following:**

14 (i) **Cultivating** and tilling soil. ~~; dairying; producing;~~

15 (ii) **Dairying.**

16 (iii) **Producing**, cultivating, growing, and harvesting
17 agricultural or horticultural commodities. ~~; raising~~

18 (iv) **Raising** livestock, bees, fur-bearing animals, or poultry.
19 ~~; and a~~

20 (v) **A practice** ~~, including forestry or lumbering operations,~~
21 performed by a farmer or on a farm as an incident to or in
22 conjunction with farming operations, including ~~preparation~~ **any of**
23 **the following:**

24 (A) **Forestry or lumbering operations.**

25 (B) **Preparation** for market. ~~; delivery~~

26 (C) **Delivery** to storage, ~~or delivery to market, or to a~~
27 carrier for transportation to market. ~~or processing~~

28 (D) **Processing** or preserving perishable farm products.

29 (f) An employee who is not subject to the minimum hourly wage

1 provisions of this act.

2 (5) The ~~director of the department of licensing and regulatory~~
3 ~~affairs~~ **commissioner** shall promulgate rules under the
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
5 24.328, to define the terms used in subsection (4).

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

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

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

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

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

26 (ii) If employees are not represented by a collective
27 bargaining agent or other representative designated by the
28 employee, a plan adopted by the employer and provided in writing to
29 its employees that provides employees with a voluntary option to

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

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

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

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

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

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

27 (e) Upon the request of an employee who has earned
28 compensatory time, the employer shall, within 30 days ~~following~~
29 **after** the request, provide monetary compensation for that

1 compensatory time at a rate not less than the regular rate earned
2 by the employee ~~at the time when~~ the employee performed the
3 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 when~~ the employee performed the overtime
10 work. 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 an
17 employee's entitlement to unemployment compensation benefits under
18 the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL
19 421.1 to 421.75.

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

28 (i) "Compensatory time" and "compensatory time off" mean hours
29 during which an employee is not working and for which the employee

1 is compensated in accordance with this subsection in lieu of
2 monetary overtime compensation.

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

5 (iii) "Overtime compensation" means the compensation required
6 under this section.

7 (9) The exemption from payment of overtime compensation under
8 subsection (4) (a) does not apply if the employee receives regular
9 weekly rate compensation at less than the following rate:

10 (a) For calendar year 2022, \$673.00.

11 (b) For calendar year 2023, \$769.00.

12 (c) For calendar year 2024, \$865.00.

13 (d) For calendar year 2025, \$961.00.

14 (e) For calendar year 2026 and until the adjusted regular
15 weekly rate compensation amount for 2027 takes effect under
16 subsection (10), \$1,057.00.

17 (10) Every January beginning in 2027, the state treasurer
18 shall adjust the regular weekly rate compensation amount then in
19 effect under subsection (9) or this subsection, as applicable, by
20 the most recent annual percentage increase, if any, in the second
21 quartile of the usual weekly earnings for full-time wage and salary
22 workers as published by the Bureau of Labor Statistics of the
23 United States Department of Labor, and shall round the adjusted
24 regular weekly rate compensation amount to the nearest dollar. The
25 wage and hour division of the department of labor and economic
26 opportunity shall post the adjusted regular weekly rate
27 compensation amount on its website by February 1 of the year in
28 which it is calculated, and the adjusted regular weekly rate
29 compensation amount is effective beginning April 1 of that year.