

HOUSE BILL No. 4709

May 3, 2005, Introduced by Reps. Condino, Bieda, Cushingberry, Leland, Plakas, Brown, Accavitti, Miller, Polidori, Alma Smith, Vagnozzi, Adamini, Whitmer, Donigan, Clack, Gleason, Anderson, Phillips, Kathleen Law, Waters, Gillard, McConico, Sheltroun, Byrum, Tobocman, Hood, Meisner, Hopgood, Gonzales, Sak, Virgil Smith, Wojno, Hunter, Spade, Zelenko, Williams, Mayes, Lemmons, Jr., Farrah and Lemmons, III 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, an
 2 employee shall receive compensation at not less than 1-1/2 times
 3 the regular rate at which the employee is employed for employment
 4 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 (1)
 7 with 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

1 following ~~applies~~ **APPLY**:

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

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

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

1 (3) ~~The~~ **THIS** state or a political subdivision, agency, or
2 instrumentality of ~~the~~ **THIS** 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 purposes
11 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 regular
15 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,
20 administrative, or professional capacity. ~~—, including an employee~~
21 ~~employed in the capacity of academic administrative personnel or~~
22 ~~teacher in an elementary or secondary school. However, an employee~~
23 ~~of a retail or service establishment is not excluded from the~~
24 ~~definition of employee employed in a bona fide executive or~~
25 ~~administrative capacity because of the number of hours in the~~
26 ~~employee's workweek which the employee devotes to activities not~~
27 ~~directly or closely related to the performance of executive or~~

1 ~~administrative activities, if less than 40% of the employee's hours~~
2 ~~in the workweek are devoted to these activities.~~ **AN EMPLOYEE WHO**
3 **RECEIVES ANNUAL WAGES OF LESS THAN \$100,000.00 IS NOT CONSIDERED TO**
4 **BE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR**
5 **PROFESSIONAL CAPACITY FOR PURPOSES OF EXEMPTION FROM OVERTIME**
6 **REQUIREMENTS UNDER THIS SUBDIVISION UNLESS THE EMPLOYEE SUPERVISES**
7 **5 OR MORE EMPLOYEES.**

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

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

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

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

27 (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 ~~consumer and industry~~
3 ~~services~~ **LABOR AND ECONOMIC GROWTH** shall promulgate rules pursuant
4 ~~to~~ **UNDER** the administrative procedures act of 1969, 1969 PA 306,
5 MCL 24.201 to 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 January 4, 1979 ~~which~~ **THAT** arises from any change in
13 existing law resulting from the enactment of subsection (2) and
14 incurred by each such 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 of
17 not less than 1-1/2 hours for each hour of employment for which
18 overtime compensation is required under this act, subject to all of
19 the following:

20 (a) The employer allows employees a total of at least 10 days
21 of leave per year without loss of pay and provides the compensatory
22 time to the employee only pursuant to 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

1 employee, a plan adopted by the employer and provided in writing to
2 its employees that provides employees with a voluntary option to
3 receive compensatory time off for overtime work when there is an
4 express, voluntary written request to the employer by an individual
5 employee for compensatory time off in lieu of overtime pay before
6 the performance of any overtime assignment.

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

9 (c) The employee is not required as a condition of employment
10 to accept or request 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 of
15 overtime compensation for overtime hours, or requiring an employee
16 to use compensatory time. In assigning overtime hours, an employer
17 shall not discriminate among employees based upon an employee's
18 choice to request or not request compensatory time off in lieu of
19 overtime compensation. An employer who violates this subsection is
20 subject to a civil fine of not more than \$1,000.00.

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

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

26 (ii) Provide an employee with a record of compensatory time
27 earned by or paid to the employee in a statement of earnings for

1 the period in which the compensatory time is earned or paid.

2 (e) Upon the request of an employee who has earned
3 compensatory time, the employer shall, within 30 days following the
4 request, provide monetary compensation for that compensatory time
5 at a rate not less than the regular rate earned by the employee at
6 the time the employee performed the overtime work.

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

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

19 (ii) ~~The~~ **THIS** state to deny unemployment compensation or
20 diminish an employee's entitlement to unemployment compensation
21 benefits under the Michigan employment security act, 1936 (Ex Sess)
22 PA 1, MCL 421.1 to 421.75.

23 (g) An employee shall be permitted to use any compensatory
24 time accrued under this subsection for any reason unless use of the
25 compensatory time for the period requested will unduly disrupt the
26 operations of the employer.

27 (h) Unless prohibited by a collective bargaining agreement, an

1 employer may terminate a compensatory time plan upon not less than
2 60 days' notice to employees.

3 (i) As used in this subsection:

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

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

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