

SUBSTITUTE FOR
SENATE BILL NO. 1171

A bill to amend 2018 PA 337, entitled
"Improved workforce opportunity wage act,"
by amending sections 3, 4, 4a, 4d, 10, and 15 (MCL 408.933,
408.934, 408.934a, 408.934d, 408.940, and 408.945).

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 3. An employer shall not pay any employee at a rate ~~this~~
2 **THAT** is less than prescribed in this act.

3 Sec. 4. (1) ~~—~~Subject to the exceptions specified in this act,
4 the minimum hourly wage rate is:

5 ~~— a. Beginning January 1, 2019, \$10.00.~~

6 ~~— b. Beginning January 1, 2020, \$10.65.~~

7 ~~— c. Beginning January 1, 2021, \$11.35.~~

8 ~~— d. Beginning January 1, 2022, \$12.00.~~

9 (A) BEFORE SEPTEMBER 1, 2014, \$7.40.

10 (B) BEGINNING SEPTEMBER 1, 2014, \$8.15.

1 (C) BEGINNING JANUARY 1, 2016, \$8.50.

2 (D) BEGINNING JANUARY 1, 2017, \$8.90.

3 (E) BEGINNING JANUARY 1, 2018, \$9.25.

4 (F) BEGINNING JANUARY 1, 2019, \$9.48.

5 (2) Every ~~October~~ **JANUARY 1** beginning in ~~October, 2022, 2020,~~
6 the state treasurer shall calculate an adjusted minimum wage rate
7 **SHALL BE INCREASED BY \$0.23 UNTIL IT EQUALS \$12.00.** The adjustment
8 shall increase the minimum wage by the rate of inflation. The
9 increase shall be calculated by multiplying the otherwise
10 applicable minimum wage by the 12 month percentage increase, if
11 any, in the consumer price index for urban wage earners and
12 clerical workers, CPI-W, or a successor index, as published by the
13 bureau of labor statistics of the United States department of
14 labor, based upon the most recent 12 month period for which data
15 are available. The adjusted minimum wage rate shall be published by
16 November 1 of the year it is calculated and shall be effective
17 beginning January 1 of the succeeding year.

18 (3) An increase in the minimum hourly wage rate as prescribed
19 in subsection (2) does not take effect if the unemployment rate **FOR**
20 **THIS STATE, AS** determined by the ~~bureau of labor statistics, BUREAU~~
21 **OF LABOR STATISTICS,** United States department of labor, for this
22 state ~~DEPARTMENT OF LABOR,~~ is 8.5% or greater for the year
23 **IMMEDIATELY** preceding the year of the prescribed increase. **AN**
24 **INCREASE IN THE MINIMUM HOURLY WAGE RATE AS PRESCRIBED IN**
25 **SUBSECTION (2) THAT DOES NOT TAKE EFFECT PURSUANT TO THIS**
26 **SUBSECTION TAKES EFFECT ON THE FIRST JANUARY 1 FOR WHICH THE**
27 **UNEMPLOYMENT RATE FOR THIS STATE, AS DETERMINED BY THE BUREAU OF**

1 **LABOR STATISTICS, UNITED STATES DEPARTMENT OF LABOR, IS LESS THAN**
2 **8.4% FOR THE YEAR IMMEDIATELY PRECEDING THAT JANUARY 1.**

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

7 (2) This state or a political subdivision, agency, or
8 instrumentality of this state does not violate subsection (1) with
9 respect to the employment of an employee in fire protection
10 activities or an employee in law enforcement activities, including
11 security personnel in correctional institutions, if any of the
12 following apply:

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

19 (b) For an employee to whom a work period of at least 7 but
20 less than 28 days applies, in the employee's work period the
21 employee receives for tours of duty, which in the aggregate exceed
22 a number of hours which bears the same ratio to the number of
23 consecutive days in the employee's work period as 216 bears to 28
24 days, compensation for those excess hours at a rate not less than
25 1-1/2 times the regular rate at which the employee is employed. The
26 employee's regular rate shall be not less than the statutory
27 minimum hourly rate.

1 (c) If an employee engaged in fire protection activities would
2 receive overtime payments under this act solely as a result of that
3 employee's trading of time with another employee pursuant to a
4 voluntary trading time arrangement, overtime, if any, shall be paid
5 to employees who participate in the trading of time as if the time
6 trade had not occurred. As used in this subdivision, "trading time
7 arrangement" means a practice under which employees of a fire
8 department voluntarily substitute for one another to allow an
9 employee to attend to personal matters, if the practice is neither
10 for the convenience of the employer nor because of the employer's
11 operations.

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

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

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

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

3 (a) An employee employed in a bona fide executive,
4 administrative, or professional capacity, including an employee
5 employed in the capacity of academic administrative personnel or
6 teacher in an elementary or secondary school. However, an employee
7 of a retail or service establishment is not excluded from the
8 definition of employee employed in a bona fide executive or
9 administrative capacity because of the number of hours in the
10 employee's workweek that the employee devotes to activities not
11 directly or closely related to the performance of executive or
12 administrative activities, if less than 40% of the employee's hours
13 in the workweek are devoted to those activities.

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

15 (c) A political appointee of a person holding public elective
16 office or a political appointee of a public body, if the political
17 appointee described in this subdivision is not covered by a civil
18 service system.

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

22 (e) An employee employed in agriculture, including farming in
23 all its branches, which among other things includes: cultivating
24 and tilling soil; dairying; producing, cultivating, growing, and
25 harvesting agricultural or horticultural commodities; raising
26 livestock, bees, fur-bearing animals, or poultry; and a practice,
27 including forestry or lumbering operations, performed by a farmer

1 or on a farm as an incident to or in conjunction with farming
2 operations, including preparation for market, delivery to storage,
3 or delivery to market or to a carrier for transportation to market
4 or processing or preserving perishable farm products.

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

7 (5) The director of the department of licensing and regulatory
8 affairs shall promulgate rules under the administrative procedures
9 act of 1969, 1969 PA 306, MCL 24.201 to 24.328, to define the terms
10 used in subsection (4).

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

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

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

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

1 (i) ~~(i)~~ Applicable provisions of a collective bargaining
2 agreement, memorandum of understanding, or any other written
3 agreement between the employer and representative of the employee.

4 (ii) ~~(ii)~~ If employees are not represented by a collective
5 bargaining agent or other representative designated by the
6 employee, a plan adopted by the employer and provided in writing to
7 its employees that provides employees with a voluntary option to
8 receive compensatory time off for overtime work when there is an
9 express, voluntary written request to the employer by an individual
10 employee for compensatory time off in lieu of overtime pay before
11 the performance of any overtime assignment.

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

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

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

1 *(i)* ~~*(i)*~~ Maintain in an employee's pay record a statement of
 2 compensatory time earned by that employee in the pay period that
 3 the pay record identifies.

4 *(ii)* ~~*(ii)*~~ Provide an employee with a record of compensatory
 5 time earned by or paid to the employee in a statement of earnings
 6 for the period in which the compensatory time is earned or paid.

7 (e) Upon the request of an employee who has earned
 8 compensatory time, the employer shall, within 30 days following the
 9 request, provide monetary compensation for that compensatory time
 10 at a rate not less than the regular rate earned by the employee at
 11 the time the employee performed the overtime work.

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

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

24 *(ii)* ~~*(ii)*~~ The state to deny unemployment compensation or
 25 diminish an employee's entitlement to unemployment compensation
 26 benefits under the Michigan employment security act, ~~1936 (Ex Sess)~~
 27 **1936 (EX SESS) PA 1**, MCL 421.1 to 421.75.

1 (g) An employee shall be permitted to use any compensatory
 2 time accrued under this subsection for any reason unless use of the
 3 compensatory time for the period requested will unduly disrupt the
 4 operations of the employer.

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

8 (i) As used in this subsection:

9 (i) ~~(i)~~—"Compensatory time" and "compensatory time off" mean
 10 hours during which an employee is not working and for which the
 11 employee is compensated in accordance with this subsection in lieu
 12 of monetary overtime compensation.

13 (ii) ~~(ii)~~—"Overtime assignment" means an assignment of hours
 14 for which overtime compensation is required under this act.

15 (iii) ~~(iii)~~—"Overtime compensation" means the compensation
 16 required under this section.

17 Sec. 4d. (1) The minimum hourly wage rate of an employee ~~shall~~
 18 ~~be as~~ **IS THE RATE** established under subsection (2) if all of the
 19 following occur:

20 (a) The employee receives gratuities in the course of his or
 21 her employment.

22 (b) ~~The~~ **IF THE** gratuities described in subdivision (a) **PLUS**
 23 **THE MINIMUM HOURLY WAGE RATE UNDER THIS SUBSECTION DO NOT** equal or
 24 exceed ~~the difference between the~~ minimum hourly wage rate
 25 **OTHERWISE** established under ~~subsection (2) and the minimum hourly~~
 26 ~~wage established under~~ section 4, **THE EMPLOYER PAYS ANY SHORTFALL**
 27 **TO THE EMPLOYEE.**

1 (c) The gratuities are proven gratuities as indicated by the
2 employee's declaration for purposes of the federal insurance
3 contribution act, 26 USC 3101 to 3128.

4 ~~—(d) The entirety of the gratuities are retained by the~~
5 ~~employee who receives them, except as voluntarily shared with other~~
6 ~~employees who are directly or indirectly part of the chain of~~
7 ~~service and whose duties are not primarily managerial or~~
8 ~~supervisory.~~

9 (D) ~~(e) The employee was informed by the employer of the~~
10 ~~provisions of this section. in writing, at or before the time of~~
11 ~~hire, and gave written consent.~~

12 (2) For purposes of subsection (1), the minimum hourly wage
13 rate of an employee ~~shall be 48% of the minimum hourly wage rate~~
14 ~~established under section 4 effective January 1, 2019; beginning~~
15 ~~January 1, 2020, it shall be 60% of the minimum hourly wage rate~~
16 ~~established under section 4; beginning January 1, 2021, it shall be~~
17 ~~70% of the minimum hourly wage rate established under section 4;~~
18 ~~beginning January 1, 2022, it shall be 80% of the minimum hourly~~
19 ~~wage rate established under section 4; beginning January 1, 2023,~~
20 ~~it shall be 90% of the minimum hourly wage rate established under~~
21 ~~section 4; and beginning January 1, 2024 and thereafter, it shall~~
22 ~~be 100% of the minimum hourly wage rate established under section~~
23 ~~4-IS:~~

24 (A) BEGINNING THE EFFECTIVE DATE OF THE 2018 AMENDATORY ACT
25 THAT AMENDED THIS SECTION, \$3.52.

26 (B) BEGINNING JANUARY 1, 2019, \$3.56.

27 (C) BEGINNING JANUARY 1, 2020, \$3.60.

1 (D) BEGINNING JANUARY 1, 2021, \$3.64.

2 (E) BEGINNING JANUARY 1, 2022, \$3.68.

3 (F) BEGINNING JANUARY 1, 2023, \$3.72.

4 (G) BEGINNING JANUARY 1, 2024, \$3.76.

5 (H) BEGINNING JANUARY 1, 2025, \$3.80.

6 (I) BEGINNING JANUARY 1, 2026, \$3.84.

7 (J) BEGINNING JANUARY 1, 2027, \$3.88.

8 (K) BEGINNING JANUARY 1, 2028, \$3.92.

9 (L) BEGINNING JANUARY 1, 2029, \$3.96.

10 (M) BEGINNING JANUARY 1, 2030, \$4.00.

11 (3) As used in this section, "gratuities" means tips or
12 voluntary monetary contributions received by an employee from a
13 guest, patron, or customer for services rendered to that guest,
14 patron, or customer and that the employee reports to the employer
15 for purposes of the federal insurance contributions act, 26 USC
16 3101 to 3128.

17 ~~—— (4) Gratuities will remain property of the employee who~~
18 ~~receives them, except pursuant to a valid and voluntary tip sharing~~
19 ~~agreement outlined in subsection (1)(d) above, regardless of~~
20 ~~whether the employer pays the lower tipped hourly wage described in~~
21 ~~subsection (2) or the full minimum hourly rate established under~~
22 ~~section 4. Gratuities and service charges paid to an employee are~~
23 ~~in addition to, and may not count towards, wages due to the~~
24 ~~employee.~~

25 ~~—— (5) Employers must provide employees and consumers written~~
26 ~~notice of their plan to distribute service charges.~~

27 ~~—— (6) Employer shall keep records showing compliance with~~

1 ~~provisions of Section 4d for no less than 3 years from the date of~~
2 ~~employee's last pay period.~~

3 Sec. 10. (1) This act does not apply to an employer that is
4 subject to the minimum wage provisions of the fair labor standards
5 act of 1938, 29 USC 201 to 219, unless those federal minimum wage
6 provisions would result in a lower minimum hourly wage than
7 provided in this act. Each of the following exceptions applies to
8 an employer who is subject to this act only by application of this
9 subsection:

10 (a) Section 4a does not apply.

11 (b) This act does not apply to an employee who is exempt from
12 the minimum wage requirements of the fair labor standards act of
13 1938, 29 USC 201 to 219.

14 (2) Notwithstanding subsection (1), an employee shall be paid
15 in accordance with the minimum wage and overtime compensation
16 requirements of sections 4 and 4a if the employee meets either of
17 the following conditions:

18 (a) He or she is employed in domestic service employment to
19 provide companionship services as defined in 29 CFR 552.6 for
20 individuals who, because of age or infirmity, are unable to care
21 for themselves and is not a live-in domestic service employee as
22 described in 29 CFR 552.102.

23 (b) He or she is employed to provide child care, but is not a
24 live-in domestic service employee as described in 29 CFR 552.102.
25 However, the requirements of sections 4 and 4a do not apply if the
26 employee meets all of the following conditions:

27 (i) ~~(i)~~ He or she is under the age of 18.

1 (ii) ~~(ii)~~—He or she provides services on a casual basis as
2 defined in 29 CFR 552.5.

3 (iii) ~~(iii)~~—He or she provides services that do not regularly
4 exceed 20 hours per week, in the aggregate.

5 (3) This act does not apply to persons employed in summer
6 camps for not more than 4 months or to employees who are covered
7 under section 14 of the fair labor standards act of 1938, 29 USC
8 214.

9 (4) This act does not apply to agricultural fruit growers,
10 pickle growers and tomato growers, or other agricultural employers
11 who traditionally contract for harvesting on a piecework basis, as
12 to those employees used for harvesting, until the board has
13 acquired sufficient data to determine an adequate basis to
14 establish a scale of piecework and determines a scale equivalent to
15 the prevailing minimum wage for that employment. The piece rate
16 scale shall be equivalent to the minimum hourly wage in that, if
17 the payment by unit of production is applied to a worker of average
18 ability and diligence in harvesting a particular commodity, he or
19 she receives an amount not less than the hourly minimum wage.

20 **(5) THIS ACT DOES NOT APPLY TO AN INDIVIDUAL WHO IS 16 YEARS**
21 **OF AGE OR OLDER BUT LESS THAN 21 YEARS OF AGE IN HIS OR HER**
22 **CAPACITY AS AN ICE HOCKEY PLAYER FOR A JUNIOR ICE HOCKEY TEAM THAT**
23 **IS A MEMBER OF A REGIONAL, NATIONAL, OR INTERNATIONAL JUNIOR ICE**
24 **HOCKEY LEAGUE.**

25 (6) ~~(5)~~—Notwithstanding any other provision of this act,
26 subsection (1)(a) and (b) and subsection (2) do not deprive an
27 employee or any class of employees of any right that existed on

1 September 30, 2006 to receive overtime compensation or to be paid
2 the minimum wage.

3 Sec. 15. (1) ~~Except as provided in subsection (2), this~~ **THIS**
4 act shall supersede any acts or parts of acts inconsistent with or
5 in conflict with this act, but only to the extent of such
6 inconsistency or conflict.

7 ~~— (2) This act does not repeal, abrogate, amend, limit, modify,~~
8 ~~supersede, or otherwise affect Act No. 166 of the Public Acts of~~
9 ~~1965, as amended, being sections 408.551 to 408.558 of the Michigan~~
10 ~~Compiled Laws, or any other prevailing wage law.~~

11 (2) ~~(3) Any reference in any law to 2014 Public Act 138, the~~
12 ~~Workforce Opportunity Wage Act, or to the state minimum wage law~~
13 **THE WORKFORCE OPPORTUNITY WAGE ACT, 2014 PA 138, MCL 408.411 TO**
14 **408.424,** shall be considered a reference to this act.