

MICHIGAN EMPLOYMENT LAW Overtime Wage Laws



Federal overtime wage payment requirements are governed by the Fair Labor Standards Act (FLSA). In Michigan, these requirements are governed by the Michigan Workforce Opportunity Wage Act (WOWA). Under both laws, employees must receive **one and one-half times** their regular wage rate for all hours worked in excess of 40 hours in a workweek.

The [Michigan Department of Licensing and Regulatory Affairs](#) (LARA) enforces overtime standards throughout the state.

STATE RESOURCES

Department of Licensing and Regulatory Affairs
www.michigan.gov/lara/

Publications

LARA has published the following wage and hour information on its website:

- [Minimum rate and overtime wages](#)
- [Wage payment, fringe benefits and recordkeeping](#)
- [Prevailing wage](#)

FAQs

LARA has provided the following [answers](#) to wage and hour frequently asked questions.

Poster

Employers can use this [notice](#) to satisfy their posting requirement.

OVERTIME PAY

Michigan law requires employers to compensate their employees with **one and one-half times** their regular wage rate for any overtime hours worked. Overtime hours are hours worked in excess of **40 hours in a workweek** or, in some cases, **10 hours during a workday**. The hours an employee works during one workweek cannot be averaged with the hours worked on any other workweek.

EXEMPTIONS FROM OVERTIME PAYMENT LAWS

Michigan overtime wage payment laws do *not* apply to:

- Academic administrative and teaching personnel employed in an elementary or secondary school;
- Agricultural employees (certain conditions may apply);
- Amusement and recreational establishment employees (if the establishment does not operate for more than seven months during a calendar year);
- Bona fide executive, administrative and professional employees (including individuals in the retail industry when at least 60 percent of their activities are administrative in nature);
- Certain individuals who work and reside in a hospital or other establishment that primarily provides care for the sick, aged or mentally ill operated by the state or a political subdivision, agency or instrumentality (additional conditions may apply);
- Elected public officers and their political appointees (if not covered by a civil service system);
- Ice hockey players who are between 16 and 21 years of age and play for a team that is part of a regional, national or international junior ice hockey league (effective March 21, 2018)
- Individuals covered by the FLSA, unless the state minimum wage rate is higher than



the federal minimum wage rate;

- Individuals employed in summer camps for not more than four months.
- Individuals exempt from the minimum wage rate under the FLSA;
- Individuals working under a special certificate issued by the U.S. Department of Labor; or
- State fire protection, law enforcement and correctional institution security personnel (certain conditions apply);

CALCULATING THE REGULAR RATE OF PAY

An employee's regular rate of pay is the actual rate he or she receives for a standard, non-overtime workweek. Employers must calculate their employees' regular rate before they can determine applicable overtime wages. An employee's regular rate can vary from week to week and may be different from the employee's contractual rate of pay.

To calculate an employee's regular rate for a specific work period, employers must divide the employee's **compensation** for a workweek by the **number of hours worked** by the employee during that period.

COMPENSATION

An employee's total compensation is the entire amount of compensation the employee receives for his or her labor or services, excluding fringe benefits, regardless of whether they are fixed or determined on the basis of time, task, piece, commission or any other method.

- Fringe benefits include:
- Paid time off for sickness, injury, vacation and personal reasons;
- Bonuses;
- Authorized expenses incurred during the course of employment; and
- Contributions employers make on behalf of their employees.

WORKWEEK

A workweek in Michigan is a fixed period of **168 hours**, or **seven consecutive 24-hour workdays**. The workweek can begin on any day of the week and at any hour of the day, without coinciding with a calendar week. However, hospitals, establishments and institutions that are primarily engaged in the care of the sick, the aged the mentally ill or developmentally disabled may calculate overtime work as more than 80 hours of work over a 14-day period. This accommodation is valid only if:

- Employers also provide overtime compensation for any work their employees perform over 8 hours in any particular workday;
- Employers and employees agree in writing to calculating overtime compensation over a 14-day period; and
- The patients employees care for reside on the employer's premises.

Under certain circumstances, Michigan law also allows employers to set different workweeks for fire protection and law enforcement personnel (including security personnel in correctional institutions).

To adequately calculate overtime compensation, employers are required to establish, record and indicate the beginning time and day of the workweek in each employee's personnel record. Once an employee's workweek has been established, it should remain fixed and may not be changed, except if the change is intended to be permanent and is not used to evade overtime regulations.



To determine the number of hours an employee works during a workweek, the employer must consider any time during which the employee was subject to the employer's control. Typically, this includes any time the employee is:

- Allowed to work (regardless of whether he or she is required to work);
- Waiting for a job assignment;
- Waiting to begin work;
- Cleaning or performing other "off the clock" duties; and
- Traveling under the request, control or direction of the employer (excluding normal commuting time to and from work).

LEGAL DAY'S WORK

Michigan recognizes a **10-hour work day** as a legal day's work for any;

- Factory or workshop;
- Salt block, saw-mill, logging or lumber camp; or
- Boom, drive, mine or other place used for mechanical, manufacturing or other purpose within the state.

The 10-hour day is a default standard. Employers with no contract or agreement that expressly and specifically designate a different legal day's work will be held to the 10-hour standard. This means that, unless there is an agreement to the contrary, employees are entitled to receive overtime pay for any work performed over 10 hours during a workday.

COMPENSATORY TIME OFF

Instead of overtime pay, employers may choose to compensate an employee's overtime work with compensatory time off. Compensatory time off must be rewarded at a rate of **one and one-half hours for each hour of overtime work**.

ELIGIBILITY

- Employers can exercise this option only if *all* of the following conditions are met:
- The employer provides employees with at least 10 paid leave days per year;
- The employer's compensatory time off plan is part of a collective bargaining agreement or an employer plan that is provided in writing to all employees not represented by a collective bargaining agent. In these cases, the employer's compensatory time off plan must be optional and must instruct employees to submit an express, voluntary and written request to the employer for compensatory time off instead of overtime pay *before* the performance of any overtime work;
- The employees working overtime and requesting compensatory time off have not accrued more than **240 hours** of compensatory time off;
- The employer does not require its employees to accept or request compensatory time off as a condition of employment;
- The employer does not directly or indirectly intimidate, threaten or coerce employees for exercising or denying their right to use accrued compensatory time off; and
- When assigning overtime hours, the employer does not discriminate among employees based on their choice to request compensatory time off instead of overtime pay (this type of discrimination is subject to a civil fine of up to \$1,000).

RESTRICTIONS

This guide is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. It is provided for general informational purposes only. Readers should contact legal counsel for legal advice.



Because Michigan law does not allow employees to accrue more than 240 hours of compensatory time off, employers are required to maintain a record of how much compensatory time off is accrued by each employee.

Employers must allow their employees to use their compensatory time off for any reason, unless it unduly disrupts the employer's operations.

Employers must compensate employees that use their compensatory time off at no less than the regular wage rate the employee earned at the time he or she performed overtime work. An employee that is separated from employment is also entitled to receive compensation for all unused compensatory time off at no less than the regular wage rate the employee earned at the time he or she performed overtime work.

Finally, employers may not oppose an employee's application for unemployment compensation solely because the employee has received, or is eligible to receive, monetary compensation for earned compensatory time off. Once instituted, employers must provide at least **60 days' advance notice** to their employees before terminating a compensatory time off program.

PENALTIES

Employers that fail to pay overtime wages as established by the WOVA commit a misdemeanor, punishable by **a fine of between \$5 and \$50 for each offense**.

In addition, affected employees (or groups of employees) may sue their employers for any violation of the WOVA to recover unpaid wages. Lawsuits must be filed within **three years** of the violation. Remedies may include:

- A civil fine of up to \$1,000;
- The difference between what the employee received and what the employee should have received if the violation had not taken place;
- An equal amount of the difference of what the employee received and what the employee should have received if the violation had not taken place as liquidated damages;
- Court costs; and
- Reasonable attorneys' fees.

MORE INFORMATION

Contact Gallagher Risk Management - Tulsa for more information on wage payment and work hour laws in Michigan.