

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

WAGE AND HOUR DIVISION

GENERAL RULES

Filed with the secretary of state on

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(6) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.444, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by section 6 of **the improved workforce opportunity wage act, 2018 PA 337, MCL 408.936** ~~2014 PA 138, MCL 408.416~~, and Executive Reorganization No. 2016-3, MCL 408.431)

R 408.701, R 408.706, R 408.777, R 408.778, and R 408.785 of the Michigan Administrative Code are amended as follows:

PART 1. GENERAL PROVISIONS

R 408.701 Definitions.

Rule 1. As used in these rules:

(a) "Act" means the **improved** workforce opportunity wage act, **2018 PA 337, MCL 408.931 to 408.945** ~~2014 PA 138, MCL 408.411 to 408.424~~.

(b) "Administrative capacity" means an employee ~~who is compensated on a salary basis at not less than \$250.00 per week and whose primary duty is nonmanual work directly related to the administration of an educational institution~~ **to whom all of the following apply:**

(i) Compensation is on a salary basis at no less than the federal standard salary level per week for overtime exempt employees.

(ii) The employee's primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer.

(iii) The employee uses discretion and independent judgment in matters of significance.

(c) "Commission" means all earnings of an employee, in addition to the hourly rate of pay, which the employee has been led to expect on a regular basis as a result of an employment contract, agreement, or promise.

(d) "Compensatory time" means paid time off earned at 1½ times the regular hours worked in excess of 40 hours in a week and paid at some future time.

(e) "Department" means the department of licensing and regulatory affairs.

~~(e)~~ **(f) "Executive capacity" means an employee to whom all of the following provisions**

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apply:

(i) Compensation is on a salary basis at not less than ~~\$250.00 per week~~ **the federal standard salary level per week for overtime exempt employees.**

(ii) The employee's primary duty is management.

(iii) The employee supervises 2 or more employees.

~~(f)~~ **(g)** "Fee" means a fixed amount for a service provided or job completed regardless of time required for completion.

~~(g)~~ **(h)** "Paid time off" means compensation for time off paid to the employee for vacation, personal time, or sick time.

~~(h)~~ **(i)** "Professional employee" means an employee who is compensated on a salary **or fee** basis at no less than ~~\$250.00 per week~~ **the federal standard salary level per week for overtime exempt employees** and whose primary duty is any of the following:

(i) Work in a field of science or learning that requires knowledge acquired by a prolonged course of specialized instruction.

(ii) Work in a recognized field of artistic endeavor that depends upon the talent of the employee.

(iii) Work in an educational institution as a teacher, tutor, instructor, or lecturer.

~~(i)~~ **(j)** "Salary" means payment of a fixed amount not subject to reduction because of variations in the quantity or quality of work performed.

(k) "Tipped employee" means an employee who receives gratuities and meets the requirements found in section 4d of the act, MCL 408.934d.

~~(j)~~ **(l)** "Workweek," as applied to an employee, means a fixed and regular recurring period of 168 hours or 7 consecutive 24-hour periods. Workweek need not coincide with the calendar week, but may begin on any day and at any hour of the day. For purposes of computing overtime pay, a single workweek may be established for 1 employee or different workweeks may be established for different employees or groups of employees.

R 408.706 Complaint; filing date; time limitation.

Rule 6. (1) A complaint shall be considered filed with the department as of the date it is received by the department.

(2) A claim must be filed with the department within 3 years of the date of the alleged violation.

(3) As used in this rule, "claim" means a form or other written statement received by the department from an employee, for work performed in Michigan, that provides the name and address of the claimant, name and address of the employer, date or dates the alleged violation occurred, and an estimate of the amount of minimum wages or overtime wages, or both, alleged due.

WAGE DEVIATION

R 408.777 Wage deviation certificate; application; specifications; duration; issuance and denial; amendment.

Rule 7. (1) An application for a wage deviation certificate shall be filed by a rehabilitation facility or by a private sector employer seeking to pay a deviated wage rate to handicapped workers not covered under section 14(c) of the fair labor standards act of 1938, as amended, 29 U.S.C. 214. A unit of rehabilitation facility having an

identifiable program ~~which~~ **that** operates at a different location under separate supervision shall file **a separate application for a wage deviation certificate applications separately.**

(2) A certificate ~~shall~~ **must** specify the terms and conditions under which it is granted.

(3) A certificate ~~shall~~ takes effect on the date issued and ~~shall be~~ **is** effective for 12 months. Handicapped workers may be paid a deviated wage rate only during the effective period of the certificate.

(4) If a certificate is issued by the director, a copy shall be sent to the rehabilitation facility or private sector employer. If denied, the applicant ~~shall~~ **must** be notified in writing of the denial and the reasons for the denial and of the **right of appeal rights** provided for in R 408.784 and R 408.785.

(5) The terms of a certificate may be amended upon written request from a rehabilitation facility or private sector employer and subsequent approval by the director.

R 408.778 Certification of applications for private sector employment.

Rule 8. (1) An application **for a wage deviation certificate** submitted by a private sector employer not covered by ~~meeting~~ the definition of a rehabilitation facility ~~shall be certified~~ **requires certification** by either the Michigan rehabilitation services in the Michigan department of health and human services or the bureau of services for blind persons in the ~~Michigan department of licensing and regulatory affairs~~, or both.

(2) Certification by the bureau of services for blind persons is required ~~when if~~ the worker covered under the certificate is legally blind, as determined pursuant to section 1(a) of 1978 PA 260, MCL 393.351(a). All other applicants shall be certified by the Michigan rehabilitation services.

(3) Certification ~~shall~~ **must** involve a determination that the productive capacity of the handicapped worker to be covered by the certificate is genuinely impaired by a physical or mental disability and that the handicapped worker is to be paid a commensurate wage.

R 408.785 Appeal to circuit court; finality of resolution.

Rule 15. (1) A rehabilitation facility or private sector employer aggrieved by the decision of the director following a hearing under R 408.783 and R 408.784 may, within 60 days after date of mailing of the decision, appeal to the circuit court by filing a petition for review pursuant to the provisions of chapter 6 of the administrative procedures act of 1969, 1969 PA 306, MCL 24.301 to 24.306.

(2) ~~If the A decision of by~~ the director to cancel or deny a certificate pursuant to R 408.783 and R 408.784 **that** is not appealed to circuit court within 60 days after the date of mailing, ~~the decision~~ is final.