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Michigan Senate

February 21, 2019

Chief Justice Bridget McCormack
Michigan Supreme Court
Michigan Hall of Justice
925 W. Ottawa Street
P.O. Box 30052
Lansing, MI 48909

Dear Chief Justice McCormack,

On February 20, 2019, the Michigan Senate adopted **Senate Resolution No. 16,** requesting an opinion of the Supreme Court of the state of Michigan pursuant to Article III, Section 8 of the *Constitution of the State of Michigan of 1963.*

In compliance with the provisions contained therein, I am forwarding to you a copy of the above resolution and Public Acts 368 and 369 of 2018.

Sincerely,

Margaret O'Brien
Secretary of the Senate

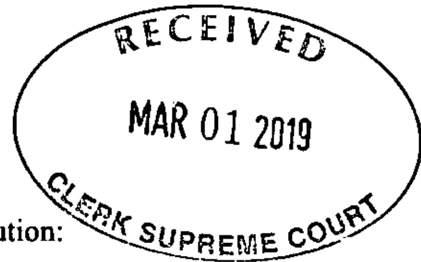
MO/cab

Enclosures

cc: Justice Stephen J. Markman
Justice Brian K. Zahra
Justice David F. Viviano
Justice Richard H. Bernstein
Justice Elizabeth T. Clement
Justice Megan K. Cavanaugh

Recycled Paper

SR16, As Adopted by Senate, February 20, 2019



Senators MacGregor and Daley offered the following resolution:

Senate Resolution No. 16.

A resolution to request an opinion of the Supreme Court of the state of Michigan pursuant to Article III, Section 8 of the *Constitution of the State of Michigan of 1963.*

Whereas, On July 30, 2018, the Department of State submitted to the Michigan Legislature a legislative initiative petition, an initiation of legislation to enact the "Earned Sick Time Act," for consideration under Article II, Section 9 of the *Constitution of the State of Michigan of 1963*; and

Whereas, On August 27, 2018, the Department of State submitted to the Michigan Legislature a legislative initiative petition, an initiation of legislation to enact the "Improved Workforce Opportunity Wage Act," for consideration under Article II, Section 9 of the *Constitution of the State of Michigan of 1963*; and

Whereas, On September 5, 2018, the Senate and House of Representatives adopted the legislative initiative petition to enact into law the "Improved Workforce Opportunity Wage Act," which was subsequently assigned Public Act 337 of 2018, and will not take effect until March 29, 2019; and

Whereas, On September 5, 2018, the Senate and House of Representatives adopted the legislative initiative petition to enact into law the "Earned Sick Time Act," which was subsequently assigned Public Act 338 of 2018, and will not take effect until March 29, 2019; and

Whereas, On November 8, 2018, Senate Bill No. 1171 was introduced to amend the "Improved Workforce Opportunity Wage Act" created under Public Act 337 of 2018; and

Whereas, On November 8, 2018, Senate Bill No. 1175 was introduced to amend the "Earned Sick Time Act" created under Public Act 338 of 2018; and

Whereas, Senate Bill No. 1171 and Senate Bill No. 1175 of the 2018 Regular Session of the Legislature were signed into law by Governor Rick Snyder on December 13, 2018, as Public Act 368 of 2018 and Public Act 369 of 2018, respectively, and will not take effect until March 29, 2019; and

Whereas, On February 13, 2019, a request for a formal opinion was submitted to the Attorney General regarding the constitutionality of Public Act 368 of 2018 and Public Act 369 of 2018, which amended legislative initiative petitions enacted by the Legislature during the same legislative session; and

Whereas, The Senate has determined that important questions of law exist with respect to the constitutionality of Public Act 368 of 2018 and Public Act 369 of 2018; and

Whereas, Article III, Section 8 of the *Constitution of the State of Michigan of 1963* states:

> Either house of the legislature or the governor may request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.

; now, therefore, be it

Resolved by the Senate, That the Senate requests the Supreme Court of the state of Michigan issue an opinion, pursuant to Article III, Section 8 of the *Constitution of the State of Michigan of 1963*, on the following important questions of law pertaining to Public Act 368 of 2018 and Public Act 369 of 2018:

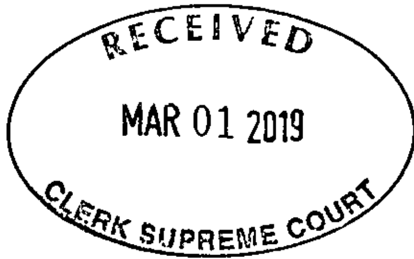
1. Does Article II, Section 9 of the *Constitution of the State of Michigan of 1963* permit the Legislature to enact an initiative petition into law and then subsequently amend that law during the same legislative session?

2. Were Public Act 368 of 2018 and Public Act 369 of 2018 enacted in accordance with Article II, Section 9 of *the Constitution of the State of Michigan of 1963*?

; and be it further

Resolved, That the Senate Majority Leader is authorized to engage counsel in furtherance of this request for an opinion from the Supreme Court of the state of Michigan and take all necessary steps incidental thereto; and be it further

Resolved, That copies of this resolution be transmitted to the Supreme Court of the state of Michigan.



Act No. 368
Public Acts of 2018
Approved by the Governor
December 13, 2018
Filed with the Secretary of State
December 14, 2018
EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senator Hildenbrand

ENROLLED SENATE BILL No. 1171

AN ACT to amend 2018 PA 337, entitled "An initiation of legislation to enact the Improved Workforce Opportunity Wage Act which would fix minimum wages for employees within this state; prohibit wage discrimination; provide for a wage deviation board; provide for the administration and enforcement of the act; prescribe penalties for the violation of the act; and supersede certain acts and parts of acts including 2014 PA 138," 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:

Sec. 3. An employer shall not pay any employee at a rate that is less than prescribed in this act.

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

(a) Before September 1, 2014, $7.40.

(b) Beginning September 1, 2014, $8.15.

(c) Beginning January 1, 2016, $8.50.

(d) Beginning January 1, 2017, $8.90.

(e) Beginning January 1, 2018, $9.25.

(f) In calendar year 2019, or a subsequent calendar year as described in subsection (2), $9.45.

(g) In calendar year 2020, or a subsequent calendar year as described in subsection (2), $9.65.

(h) In calendar year 2021, or a subsequent calendar year as described in subsection (2), $9.87.

(i) In calendar year 2022, or a subsequent calendar year as described in subsection (2), $10.10.

(j) In calendar year 2023, or a subsequent calendar year as described in subsection (2), $10.33.

(k) In calendar year 2024, or a subsequent calendar year as described in subsection (2), $10.56.

(*l*) In calendar year 2025, or a subsequent calendar year as described in subsection (2), $10.80.

(m) In calendar year 2026, or a subsequent calendar year as described in subsection (2), $11.04.

(n) In calendar year 2027, or a subsequent calendar year as described in subsection (2), $11.29.

(o) In calendar year 2028, or a subsequent calendar year as described in subsection (2), $11.54.

(p) In calendar year 2029, or a subsequent calendar year as described in subsection (2), $11.79.

(q) In calendar year 2030, or a subsequent calendar year as described in subsection (2), $12.05.

(2) An increase in the minimum hourly wage rate as prescribed in subsection (1) does not take effect if the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is 8.5% or greater for the calendar year preceding the calendar year of the prescribed increase. An increase in the minimum hourly wage rate as prescribed in subsection (1) that does not take effect pursuant to this subsection takes effect in the first calendar year following a calendar year for which the unemployment rate for this state, as determined by the Bureau of Labor Statistics, United States Department of Labor, is less than 8.5%.

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) An employee employed in agriculture, including farming in all its branches, which among other things includes: cultivating and tilling soil; dairying; producing, cultivating, growing, and harvesting agricultural or horticultural

commodities; raising livestock, bees, fur-bearing animals, or poultry; and a practice, including forestry or lumbering operations, performed by a farmer or on a farm as an incident to or in conjunction with farming operations, including preparation for market, delivery to storage, or delivery to market or to a carrier for transportation to market or processing or preserving perishable farm products.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) As used in this subsection:

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

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

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

Sec. 4d. (1) The minimum hourly wage rate of an employee is 38% of the minimum hourly wage rate established in section 4 if all of the following occur:

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

(b) If the gratuities described in subdivision (a) plus the minimum hourly wage rate under this subsection do not equal or exceed the minimum hourly wage rate otherwise established under section 4, the employer pays any shortfall to the employee.

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

(d) The employee was informed by the employer of the provisions of this section.

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

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

(a) Section 4a does not apply.

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

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

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

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

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

(*ii*) He or she provides services on a casual basis as defined in 29 CFR 552.5.

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

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

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

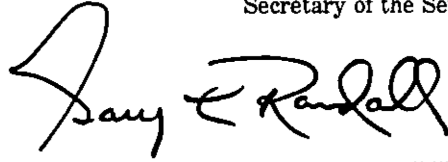
(5) This act does not apply to an individual who is 16 years of age or older but less than 21 years of age in his or her capacity as an ice hockey player for a junior ice hockey team that is a member of a regional, national, or international junior ice hockey league.

(6) Notwithstanding any other provision of this act, subsection (1)(a) and (b) and subsection (2) do not deprive an employee or any class of employees of any right that existed on September 30, 2006 to receive overtime compensation or to be paid the minimum wage.

Sec. 15. (1) This act shall supersede any acts or parts of acts inconsistent with or in conflict with this act, but only to the extent of such inconsistency or conflict.

(2) Any reference in any law to the workforce opportunity wage act, 2014 PA 138, MCL 408.411 to 408.424, shall be considered a reference to this act.

Secretary of the Senate

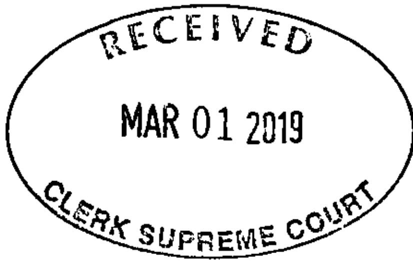


Clerk of the House of Representatives

Approved ....

....

Governor



Act No. 369
Public Acts of 2018
Approved by the Governor
December 13, 2018
Filed with the Secretary of State
December 14, 2018
EFFECTIVE DATE: 91st day after final adjournment of 2018 Regular Session

STATE OF MICHIGAN
99TH LEGISLATURE
REGULAR SESSION OF 2018

Introduced by Senator Shirkey

ENROLLED SENATE BILL No. 1175

AN ACT to amend 2018 PA 338, entitled "An initiation of legislation to provide workers with the right to earn sick time for personal or family health needs, as well as purposes related to domestic violence and sexual assault and school meetings needed as the result of a child's disability, health issues or issues due to domestic violence and sexual assault; to specify the conditions for accruing and using earned sick time; to prohibit retaliation against an employee for requesting, exercising, or enforcing rights granted in this act; to prescribe powers and duties of certain state departments, agencies, and officers; to provide for promulgation of rules; and to provide remedies and sanctions," by amending the title and sections 1, 2, 3, 4, 5, 7, 8, 10, 11, and 14 (MCL 408.961, 408.962, 408.963, 408.964, 408.965, 408.967, 408.968, 408.970, 408.971, and 408.974); and to repeal acts and parts of acts.

The People of the State of Michigan enact:

TITLE

An act to require certain employers to provide certain employees with paid medical leave for personal or family health needs, as well as purposes related to domestic violence and sexual assault; to specify the conditions for accruing and using paid medical leave; to prescribe powers and duties of certain state departments, agencies, and officers; and to provide remedies and sanctions.

Sec. 1. This act shall be known and may be cited as the "paid medical leave act".

Sec. 2. As used in this act:

(a) "Benefit year" means any consecutive 12-month period used by an employer to calculate an eligible employee's benefits.

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

(c) "Director" means the director of the department or the director's designee.

(d) "Domestic violence" means that term as defined in section 1 of 1978 PA 389, MCL 400.1501.

(e) "Eligible employee" means an individual engaged in service to an employer in the business of the employer and from whom an employer is required to withhold for federal income tax purposes. Eligible employee does not include any of the following:

(*i*) An individual who is exempt from overtime requirements under section 13(a)(1) of the fair labor standards act, 29 USC 213(a)(1).

(*ii*) An individual who is not employed by a public agency, as that term is defined in section 3 of the fair labor standards act, 29 USC 203, and who is covered by a collective bargaining agreement that is in effect.

(*iii*) An individual employed by the United States government, another state, or a political subdivision of another state.

(*iv*) An individual employed by an air carrier as a flight deck or cabin crew member that is subject to title II of the railway labor act, 45 USC 151 to 188.

(*v*) An employee as described in section 201 of the railway labor act, 45 USC 181.

(*vi*) An employee as defined in section 1 of the railroad unemployment insurance act, 45 USC 351.

(*vii*) An individual whose primary work location is not in this state.

(*viii*) An individual whose minimum hourly wage rate is determined under section 4b of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934b.

(*ix*) An individual described in section 29(1)(*l*) of the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.29.

(*x*) An individual employed by an employer for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer.

(*xi*) A variable hour employee as defined in 26 CFR 54.4980H-1.

(*xii*) An individual who worked, on average, fewer than 25 hours per week during the immediately preceding calendar year.

(f) "Employer" means any person, firm, business, educational institution, nonprofit agency, corporation, limited liability company, government entity, or other entity that employs 50 or more individuals. Employer does not include the United States government, another state, or a political subdivision of another state.

(g) "Family member" includes all of the following:

(*i*) A biological, adopted or foster child, stepchild or legal ward, or a child to whom the eligible employee stands in loco parentis.

(*ii*) A biological parent, foster parent, stepparent, or adoptive parent or a legal guardian of an eligible employee or an eligible employee's spouse or an individual who stood in loco parentis when the eligible employee was a minor child.

(*iii*) An individual to whom the eligible employee is legally married under the laws of any state.

(*iv*) A grandparent.

(*v*) A grandchild.

(*vi*) A biological, foster, or adopted sibling.

(h) "Health care provider" means that term as defined in section 101 of the family and medical leave act, 29 USC 2611.

(i) "Paid medical leave" means time off from work that is provided by an employer to an eligible employee that can be used for the purposes described in section 4(1).

(j) "Sexual assault" means any act that violates section 520b, 520c, 520d, 520e, or 520g of the Michigan penal code, 1931 PA 328, MCL 750.520b, 750.520c, 750.520d, 750.520e, and 750.520g.

Sec. 3. (1) An employer shall provide paid medical leave to each of the employer's eligible employees in this state.

(2) Except as otherwise provided in subsection (3), an eligible employee must accrue paid medical leave at a rate of at least one hour of paid medical leave for every 35 hours worked. An employer is not required to allow an eligible employee to accrue more than 1 hour of paid medical leave in a calendar week. An employer may limit an eligible employee's accrual of paid medical leave to not less than 40 hours per benefit year. An employer is not required to allow an eligible employee to carry over more than 40 hours of unused accrued paid medical leave from one benefit year to another benefit year. An employer is not required to allow an eligible employee to use more than 40 hours of paid family medical leave in a single benefit year.

(3) As an alternative to subsection (2), an employer may provide at least 40 hours of paid medical leave to an eligible employee at the beginning of a benefit year. For eligible employees hired during a benefit year, an employer may prorate paid medical leave provided under this subsection. If an employer elects to provide paid medical leave to an eligible employee pursuant to this subsection, the employer is not required to allow the eligible employee to carry over any of that paid medical leave to another benefit year.

(4) Paid medical leave as provided in this section shall begin to accrue on the effective date of this law, or upon commencement of the employee's employment, whichever is later. An employee may use accrued paid medical leave as it is accrued, except that an employer may require an employee to wait until the ninetieth calendar day after commencing employment before using accrued paid medical leave.

(5) There is a rebuttable presumption that an employer is in compliance with this act if the employer provides at least 40 hours of paid leave to an eligible employee each benefit year.

(6) An employer shall pay each eligible employee using paid medical leave at a pay rate equal to the greater of either the normal hourly wage or base wage for that eligible employee or the minimum wage rate established in section 4 of the improved workforce opportunity wage act, 2018 PA 337, MCL 408.934. An employer is not required to include overtime pay, holiday pay, bonuses, commissions, supplemental pay, piece-rate pay, or gratuities in the calculation of an eligible employee's normal hourly wage or base wage.

(7) As used in this section:

(a) "Hours worked" does not include, unless otherwise included by an employer, hours taken off from work by an eligible employee for paid leave.

(b) "Paid leave" includes, but is not limited to, paid vacation days, paid personal days, and paid time off.

Sec. 4. (1) An employer shall allow an eligible employee to use paid medical leave accrued under section 3 for any of the following:

(a) The eligible employee's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's mental or physical illness, injury, or health condition; or preventative medical care for the eligible employee.

(b) The eligible employee's family member's mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of the eligible employee's family member's mental or physical illness, injury, or health condition; or preventative medical care for a family member of the eligible employee.

(c) If the eligible employee or the eligible employee's family member is a victim of domestic violence or sexual assault, the medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate due to domestic violence or sexual assault; to obtain legal services; or to participate in any civil or criminal proceedings related to or resulting from the domestic violence or sexual assault.

(d) For closure of the eligible employee's primary workplace by order of a public official due to a public health emergency; for an eligible employee's need to care for a child whose school or place of care has been closed by order of a public official due to a public health emergency; or if it has been determined by the health authorities having jurisdiction or by a health care provider that the eligible employee's or eligible employee's family member's presence in the community would jeopardize the health of others because of the eligible employee's or family member's exposure to a communicable disease, whether or not the eligible employee or family member has actually contracted the communicable disease.

(2) An eligible employee shall, when requesting to use paid medical leave, comply with his or her employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employer shall give an eligible employee at least 3 days to provide the employer with documentation. This act does not prohibit an employer from disciplining or discharging an eligible employee for failing to comply with the employer's usual and customary notice, procedural, and documentation requirements for requesting leave.

(3) Paid medical leave must be used in 1-hour increments unless the employer has a different increment policy and the policy is in writing in an employee handbook or other employee benefits document.

(4) An employer may require an eligible employee who is using paid medical leave because of domestic violence or sexual assault to provide documentation that the paid medical leave has been used for that purpose. The following types of documentation are satisfactory for purposes of this subsection:

(a) A police report indicating that the eligible employee or the eligible employee's family member was a victim of domestic violence or sexual assault.

(b) A signed statement from a victim and witness advocate affirming that the eligible employee or eligible employee's family member is receiving services from a victim services organization.

(c) A court document indicating that the eligible employee or eligible employee's family member is involved in legal action related to domestic violence or sexual assault.

(5) An employer shall not require that the documentation provided under subsection (4) explain the details of the violence. An employer shall not require disclosure of details relating to domestic violence or sexual assault or the details of an eligible employee's or an eligible employee's family member's medical condition as a condition of providing paid medical leave under this act. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an eligible employee or eligible employee's family member, the employer shall treat that

information as confidential and shall not disclose that information except to the affected eligible employee or with the permission of the affected eligible employee.

(6) This act does not require an employer to provide paid medical leave for any purposes other than as described in this section.

Sec. 5. (1) If an eligible employee is transferred to a separate division, entity, or location, but remains employed by the same employer, the eligible employee retains all paid medical leave that was accrued at the prior division, entity, or location and may use the accrued paid medical leave pursuant to section 4. If an eligible employee separates from employment and is rehired by the same employer, the employer is not required to allow the eligible employee to retain any unused paid medical leave that the eligible employee previously accumulated while working for the employer.

(2) This act does not require an employer to provide financial or other reimbursement to an eligible employee for accrued paid medical leave that was not used before the end of a benefit year or before the eligible employee's termination, resignation, retirement, or other separation from employment.

Sec. 7. (1) If an employer violates this act, the eligible employee affected by the violation, at any time within 6 months after the violation may file a claim with the department.

(2) The director shall enforce this act. The director shall establish a system utilizing multiple means of communication to receive complaints regarding non-compliance with this act and investigate complaints received by the department in a timely manner.

(3) Upon receiving a complaint alleging a violation of this act, the department shall investigate the complaint and attempt to resolve it through mediation between the complainant and the subject of the complaint, or other means. The department shall keep complainants notified regarding the status of their complaint and any resultant investigation. If the department determines that a violation has occurred, it shall issue to the offending person a notice of violation and the relief required of the offending person. The department shall prescribe the form and wording of notices of violation, which must include the method of appealing the determination of the department.

(4) The department may impose penalties and grant an eligible employee or former eligible employee payment of all paid medical leave improperly withheld. The department is the trustee for the eligible employee or former eligible employee and shall distribute and account for money collected under this subsection.

(5) An employer that fails to provide paid medical leave in violation of this act is subject to an administrative fine of not more than $1,000.00.

(6) An employer that willfully violates the posting requirement of section 8 is subject to an administrative fine of not more than $100.00 for each separate violation.

Sec. 8. (1) An employer shall display a poster at the employer's place of business, in a conspicuous place that is accessible to eligible employees, that contains all of the following information:

(a) The amount of paid medical leave required to be provided to an eligible employee under this act.

(b) The terms under which paid medical leave may be used.

(c) The eligible employee's right to file a complaint with the department for any violation of this act.

(2) The department shall create and make available to employers, at no cost, posters that contain the information required under subsection (1) for employers' use in complying with this section.

Sec. 10. An employer shall retain for not less than 1 year records documenting the hours worked and paid medical leave taken by eligible employees. Those records shall be open to inspection by the director at any reasonable time.

Sec. 11. This act does not do any of the following:

(a) Prohibit an employer from providing more paid medical leave than is required under this act.

(b) Diminish any other rights provided to any eligible employee under a collective bargaining agreement.

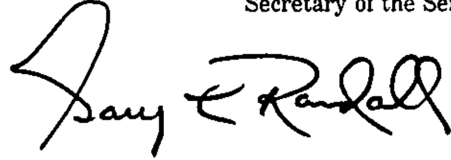
(c) Subject to section 12, preempt or override the terms of any collective bargaining agreement in effect prior to the effective date of this act.

(d) Prohibit an employer from establishing a policy that permits an eligible employee to donate unused accrued paid medical leave to another eligible employee.

Sec. 14. If any portion of this act or the application thereof to any person or circumstances shall be found to be invalid by a court, such invalidity shall not affect, impair, or invalidate the other portions or applications of the act that can be given effect without the invalid portion or application, and to this end the provisions of this act are declared to be severable. If a federal paid medical leave mandate is enacted, this act does not apply as of the effective date of the mandate.

Enacting section 1. Sections 6, 9, and 13 of 2018 PA 338, MCL 408.966, 408.969, and 408.973, are repealed.

Secretary of the Senate



Clerk of the House of Representatives

Approved ....

....
Governor