

Michigan

Employment Law Workbook Addendum

(Update on legislation enacted from Jan. 1, 2015- Dec. 31, 2016)

Topics

I. Discrimination

Members of the Civil Air Patrol, the civilian auxiliary of the United States Air Force, may be called to respond to an emergency declared by the governor or the President of the United States. This law prohibits an employer from discriminating against, disciplining, or discharging an employee because the employee is a Civil Air Patrol member, or because the employee is absent from work while responding as a Civil Air Patrol member to an emergency declared by the governor or U.S. President. The employee must provide as much notice as possible to the employer of the dates he or she will be absent and provide verification from the Civil Air Patrol of the emergency need for the employee's service.

Employees who are members of the Civil Air Patrol must notify their employers of such membership at the start of employment, by 30 days after the effective date of the law, or the date of joining the Civil Air Patrol, whichever is latest.

The law allows an employer to treat the employee's time away for emergency Civil Air Patrol service as unpaid time off. Employers are entitled to comply with a collective bargaining agreement or employee benefit plan entered before the effective date of the law.

MCLS § 408.921 (Effective Date 07/04/2016).

II. Pre-Employment Inquiry Guidelines

This law allows a private employer to adopt and apply a voluntary veterans' preference employment policy, i.e., a voluntary preference for hiring, promoting, or retaining a veteran over another equally qualified applicant or employee. The policy must be in writing and applied uniformly to employment decisions regarding hiring or promotion of veterans, or retention of veterans during a reduction in the workforce.

Under the law, a veteran is an individual meeting one or more of the following requirements:

- Served on active duty with the U.S. armed forces for a period of more than 180 days and was discharged or released from active duty with other than a dishonorable discharge.
- Discharged or released from active duty with the U.S. armed forces because of a service-connected disability.
- Discharged or released from duty with other than a dishonorable discharge from service as a member of a Reserve or National Guard component of the U.S. armed forces under an order to active duty, excluding active duty for training.

MCLS § 35.1201 (Effective 01/14/2015).

III. Family and Medical Leave

Michigan provides certain employment rights and protections to members of the United States military and National Guard. The state grants leave of absence and reemployment rights to military service members, including members of the military or naval forces of Michigan, upon completion of their active service. The amendments extend these protections to members of the military or naval forces of any other state, and clarify that active service includes active state service under the order of the governor of Michigan or any other state.

Michigan's law also prohibits employers from discharging or otherwise discriminating against an employee because of membership or service in the military or naval forces of Michigan. The amendments add anti-discrimination protections for employees who are members of the military or naval forces of any other state.

MCLS § 32.272 and MCLS § 32.273 (Effective Date 09/12/2016).

IV. Wage and Hour Laws

A. Local Wage and Benefit Laws

Michigan has joined a growing trend by enacting legislation prohibiting local governments from enacting employment laws that provide benefits greater than that provided under state or federal law. This new trend is in response to cities attempting to pass a higher minimum wage, often referred to as a living wage, as well as paid sick leave laws and other employee benefits that exceed state and federal requirements.

The new law confirms that the regulation of an employer and employee is a state concern and outside of the local government's authority and a local government is prohibited from regulating an employer and its employees or potential employees if the regulation exceeds state or federal law. However, a local government body may still enforce employment anti-discrimination laws.

A local government body includes, but is not limited to, a city, village, township, county or education institution, public authority, agency, board, commission, or other governmental, quasi-governmental, or public body that acts in a capacity for a local government or subdivision.

A local government is prohibited from regulating:

- Information an employer requests, requires, or excludes on an application for employment.
- Remedies for wage, hour, or benefit disputes.
- An employee's hours and scheduling.
- Work stoppage or strike activity.

A local government is prohibited from requiring an employer to:

- Pay employee benefits based on local rates.
- Provide paid or unpaid leave time if not already required under state/federal law.

- Provide any educational apprenticeship or training program not required under state/federal law.
- Pay for any benefit greater than that provided under state/federal law.
- Pay a wage higher than state minimum hourly wage or federal minimum wage.

If any provision is held invalid it does not affect the remaining portions of the act.

MCLS § 123.1381 through MCLS § 123.1396 (Effective Date 06/30/2016).

B. Michigan: 2017 Minimum Wage (Annual Announcement)

On May 27, 2014, Michigan enacted the Workforce Opportunity Wage Act, which is enforced by the Wage and Hour Program within the Michigan Occupational Safety and Health Administration (MIOSHA). The Act requires that the minimum wage increase from \$8.50 per hour to \$8.90 per hour beginning January 1, 2017. The Act also provides that the minimum cash wage for tipped employees will increase from \$3.23 to \$3.38 per hour on January 1, 2017.

MCLS § 408.414 (Effective Date 01/01/2017).

C. Wage Deductions

Wage payment provisions governing deductions from employee wages have been amended to address how an employer can recover, via wage deductions, money it paid to satisfy a default judgment entered against an employee.

A new provision provides that, if an employer pays an employee's debt under a default judgment, it can deduct that amount from the employee's regular wages without his or her written consent if all the following conditions are met:

- The employer provides the employee a written explanation of the deduction at least 1 pay period before the deduction is made.
- The deduction is not greater than 15% of the gross wages earned during the pay period in which the deduction is made.
- The deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction.
- The deduction does not reduce the employee's gross wages below the state or federal minimum wage, whichever is greater.

MCLS § 408.477 (Effective Date 04/15/2015).

V. Drug Testing

No new laws or regulations enacted in 2015 or 2016.

VI. Noncompete and Other Employment Agreements

No new laws or regulations enacted in 2015 or 2016.

VII. Workplace Safety

The Michigan Occupational Safety and Health Act (MIOSHA) requires an employer to make and preserve accurate and timely records and reports of work illnesses and injuries. The employer must also report work illnesses and injuries to the appropriate department. The new law eliminates detailed requirements in the MIOSHA so that the state statute does not have to be amended when federal regulations change. Specifically, the new law eliminates the requirement that an employer notify the Department of Consumer and Industry Services within eight hours of a fatality or any hospitalization of three or more employees suffering injury from the same accident or illness from exposure to the same health hazard associated with their employment. Typically, reporting requirements are specified in a state's administrative rules. Therefore, employers should follow Rule 408.22139 of the Michigan Administrative Code, which has been updated to comply with the new federal standards.

MCLS § 408.1061 (Effective Date 02/22/2016).

VIII. Workers' Compensation

No new laws or regulations enacted in 2015 or 2016.

IX. Miscellaneous

Franchisor Not an Employer of Franchisee's Employees

1.) The new law amends the Michigan Occupational Safety and Health Act by changing the definition of "employer" under the Act. As a result, employees who work in a franchise are considered employees of that franchisee alone under state law, unless otherwise specified in the franchise agreement.

MCLS § 408.1005 (Effective 05/23/2016).

2.) The new law amends the Michigan Employment Security Act by changing the definition of "employer" under the Act. As a result, employees who work in a franchise are considered employees of that franchisee alone under state law, unless otherwise specified in the franchise agreement.

MCLS § 421.41 (Effective Date 05/23/2016).

3.) The new law amends the Workforce Opportunity Act by changing the definition of "employer" under the Act. As a result, employees who work in a franchise are considered employees of that franchisee alone under state law, unless otherwise specified in the franchise agreement.

MCLS § 408.412 (Effective Date 05/23/2016).

4.) The new law amends the Payment of Wages and Fringe Benefits Act by changing the definition of "employer" under the Act. As a result, employees who work in a franchise are considered employees of that franchisee alone under state law, unless otherwise specified in the franchise agreement.

MCLS § 408.471 (Effective Date 05/23/2016).

5.) The Michigan Franchise Investment Act regulates the offer, sale, and purchase of franchises and other aspects of franchise relationships under state law. The new law amends the Act by clarifying that the franchisee is the sole employer of workers for whom it provides a

benefit plan or pays wages, except as otherwise specifically provided in the franchise agreement.

MCLS § 445.1504b (Effective Date 03/22/2016).

6.) The Michigan Worker's Disability Compensation Act sets forth the rights and obligations of employers and employees with respect to work-related injuries and illnesses, and includes provisions defining which employers are subject to the Act. The new law amends the Act to specify that employees of a franchisee are not employees of the franchisor. Specifically, the amendment provides that an employee of a franchisee is not an employee of the franchisor for the purposes of the Act unless both:

- The franchisee and franchisor share in the determination of or codetermine the matters governing the essential terms and conditions of the employee's employment; and
- The franchisee and franchisor both directly and immediately control matters relating to the employment relationship, such as hiring, firing, discipline, supervision, and direction.

MCLS § 418.120 (Effective Date 03/22/2016).