

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PAYMENT OF WAGES AND FRINGE BENEFITS

Filed with the Secretary of State on December 5, 2014

These rules take effect 7 days after filing with the Secretary of State.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 9 and 12 of 1978 PA 390, MCL 408.479 and MCL 408.482, section 6 of 2014 PA 138, MCL 408.416, and Executive Reorganization Order Nos. 1996-2, 1997-11, 2002-1, and 2003-1, MCL 445.2001, 421.94, and 445.2004, and 445.2011)

R 408.9002, R 408.9012, R 408.9019, R 408.9026, R 408.9027, R 408.9028, and R 408.9034 of the Michigan Administrative Code are amended, and R 408.9036 is added to the Code, to read as follows:

R 408.9002 Definitions; A to I.

Rule 2. (1) As used in these rules:

(a) "Act" means 1978 PA 390, MCL 408.471 to 408.490, and known as the payment of wages and fringe benefits act.

(b) "Complainant" means an employee who submits a written complaint alleging a violation of the act and who provides the information required by the department.

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

(d) "Voluntary payment in full" means either of the following:

(i) Payment of wages and fringe benefits claimed before the issuance of a departmental determination.

(ii) Payment of the full amount of wages and fringe benefits due, plus the 10% per annum penalty and any exemplary damages assessed within 14 days of the date of the determination. If the last day of the 14-day period is a Saturday, Sunday, or a state holiday, then that day is excluded and the period extends until the end of the next day that is not a Saturday, Sunday, or state holiday.

(2) As used in the act:

(a) "Administrative capacity" means an employee to whom all of the following apply:

(i) Is compensated on a salary basis at not less than \$455.00 per week.

(ii) Has the primary duty of performing office or non-manual work that is directly related to the management or general business operations of the employer.

(iii) Uses discretion and independent judgment in matters of significance.

(b) "An employee employed in a bona fide executive capacity" means an employee to whom all of the following apply:

(i) Compensation is on a salary basis at not less than \$455.00 per week.

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

(iii) The employee supervises 2 or more employees.

(c) "An employee employed in a bona fide professional capacity" means an employee who is

compensated on a salary or fee basis at not less than \$455.00 per week 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.
- (d) "Bonus" means a premium or extra or irregular remuneration in addition to wages that is awarded to an employee under a written contract or written policy.
- (e) "Director" means the director of the department or his or her authorized representative.
- (f) "Informally resolve" means any of the following:
 - (i) Voluntary payment in full as defined in R 408.9002.
 - (ii) A settlement agreement as described in R 408.9026.
 - (iii) Withdrawal of the complaint as described in R 408.9027.
 - (iv) Dismissal of the complaint due to lack of jurisdiction, as described in R 408.9036.

R 408.9012 Statement of hours worked and pay earned; records.

Rule 12. (1) An employer shall furnish each employee with a statement of the information required by section 9(2) of the act in a retainable form.

(2) The employment records for each employee shall include total daily hours worked showing and the starting and ending times each day, computed to the nearest tenth of an hour, or other finer measure.

R 408.9019 Acceptance of complaints by department.

Rule 19. The department shall accept a complaint form or other written statement received by the department from an employee for work performed in Michigan which provides all of the following:

- (a) Name and address of complainant.
- (b) Name and address of employer who is alleged to have committed the violation.
- (c) The date or dates the violation is alleged to have occurred.
- (d) An estimate of the amount of wages or fringe benefits claimed.

R 408.9026 Settlement agreement.

Rule 26. (1) A complaint may be informally resolved by a written settlement agreement that specifies all of the following:

- (a) The amount of payment agreed to.
- (b) The terms of payment agreed to. (c) The date payment is due.
- (d) A waiver of all rights to contest the amount due.
- (2) The settlement agreement shall be signed by both of the following entities:
 - (a) The complainant.
 - (b) The employer or the employer's representative.

R 408.9027 Withdrawal of complaints; request to cease enforcement of order.

Rule 27. (1) A person who has filed a complaint with the department may withdraw the complaint at any time before issuance of a departmental determination.

(2) At any time after a departmental determination has been issued, a complainant may, in writing, request the department to cease enforcement of an order. For an order less than \$30.00, written requests shall not be required.

R 408.9028 Departmental determination.

Rule 28. (1) A departmental determination shall contain all of the following, if applicable:

- (a) The name of the complainant.
- (b) The name of the employer.
- (c) The findings of the department.
- (d) A citation to the sections of the act violated, if any.
- (e) An order for the payment of wages or fringe benefits due, if any, plus a 10% per annum penalty.
- (f) An assessment of the civil penalties, if any, and the basis for the assessment.
- (g) An assessment of exemplary damages, if any, and the basis for the assessment.

(2) The department shall provide copies of the determination to the employer, the complainant, and designated legal representatives.

R 408.9034 Assessment of exemplary damages.

Rule 34. (1) The department shall order an employer who has violated section 2, 3, 4, 5, 6, 7, or 8 of the act to pay exemplary damages to the employee in either of the following situations:

- (a) If the employer was previously found to have violated the same section of the act against the same employee at any time within 12 months before the occurrence of the violation.
 - (b) If the department determines that the act was deliberately and knowingly violated.
- (2) The department may assess exemplary damages at not more than twice the amount of wages and fringe benefits which were due and shall be paid to the employee.

R 408.9036 Lack of jurisdiction.

Rule 36. The following complaints shall be dismissed:

- (a) A complaint alleging violation of sections 2 to 10 and 13a of the act, if the filing date is more than 12 months after the date the violation is alleged to have occurred.
- (b) An employee discrimination complaint alleging violation of section 13(2) of the act, if the filing date is more than 30 days after the date the violation is alleged to have occurred.
- (c) A complaint involving fringe benefits not defined under section 1(e) of the act.
- (d) A complaint involving employment in the classified state civil service system.
- (e) A complaint involving railroad employees covered by the railway laborers act.
- (f) A complaint for which a civil action is filed by the claimant or for which there is a civil judgment that includes the same wages or fringe benefits claimed with the department.
- (g) A complaint alleging either of the following:
 - (i) A claim period covered by a discharge of debt.
 - (ii) Non-payment of wages or fringe benefits earned prior to the filing of a bankruptcy petition or reorganization plan.
- (h) A complaint for wages or fringe benefits earned by an employee of an employer not identified in section 1(d) of the act, including any of the following:
 - (i) The United States postal service. (ii)

A foreign government.

(iii) Employment by an Indian tribe on a reservation or tribal land.

(iv) An employee subject to the regulations of the United States office of personnel management, formerly known as the United States civil service commission.

(i) A complaint requiring the enforcement or interpretation of a fringe benefit provision of a private sector collective bargaining agreement.

(j) A complaint filed for 1 of the following:

(i) Work performed outside of Michigan for an employer outside of Michigan.

(ii) Work performed in Michigan at a fixed site for an employer outside of Michigan subject to the jurisdiction of another state's wage protection law and that state asserts jurisdiction.

(iii) Work performed outside of Michigan for an employer located in Michigan.

(k) A complaint filed for monies deducted for taxes.

(l) A complaint filed for deductions required or expressly permitted by law.

(m) A complaint that alleges wages or fringe benefits earned by an employee, who has agreed to arbitrate compensation disputes under the authority of the federal arbitration act.

(n) A complaint that alleges wages or fringe benefits earned by an employee who has given contractual assent, not just a policy acknowledgement, to arbitration by the American arbitration association (aaa) for the issue or issues identified in the complaint.

(o) A complaint that alleges wages or fringe benefits earned by a public employee, who has a case pending, determination from, or files a case with the Michigan employment relations commission (merc) under the public employment relations act (pera) for the issue or issues identified in the complaint.