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STATE

Littler on

Michigan Employment Law

COVERAGE

Scope of Discussion. This publication is designed to help employers operating in a state to identify and apply various state employment law requirements. It follows the chronology of employment—tracking requirements from pre-hire, time of hire, during employment, and the end of employment. Because employers are subject to both federal and state employment laws, each section provides a brief overview of federal law and then summarizes applicable state law.

Although the major developments in Michigan employment law are generally covered, this publication is not all-inclusive and the current status of any decision or principle of law should be verified by counsel. In addition:

- This publication focuses on requirements for private-sector employers; requirements applicable solely to public employers are not covered. Similarly, while some provisions applicable to government contractors may be covered, this publication is not designed to address requirements applicable only to government contractors.
- Local ordinances are generally excluded from this publication. Notwithstanding, local rules may be included to the extent they deal with ban-the-box or criminal history restrictions, local minimum wage, paid sick leave, or antidiscrimination provisions. A detailed discussion of these requirements, however, is outside the scope of this publication. Further, the focus of local ordinances is primarily on jurisdictions with populations of 100,000 or more residents, but laws in locations with populations below that threshold may also be included.
- State law may create special rules or provide exceptions to existing rules for certain industries—for example, the health care industry. This publication does not offer an exhaustive look at these industry-specific exceptions and should not be interpreted to cover all industry-specific requirements.
- Civil and criminal penalties for failure to follow any particular state employment law requirement may be covered to the extent the penalty is specifically included and discussed in the statute. Any penalty discussion that is included, however, is nonexhaustive and may only highlight some of the possible penalties under the statute. In many instances, an individual statute will not include its own penalty provision; rather, a general or catchall penalty provision will apply, and these are not covered here.

To adhere to publication deadlines, developments, and decisions subsequent to **October 11, 2024** are not covered.

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1. PRE-HIRE

1.1 Classifying Workers: Employees v. Independent Contractors

1.1(a) *Federal Guidelines on Classifying Workers*

A person providing services to another for payment generally can be classified either as an employee or an independent contractor. An independent contractor is considered self-employed, whereas an employee, as the term suggests, works for an employer. The choice between classifying a worker as an independent contractor or an employee is more than a question of terminology and can have many and far-reaching consequences for a company. A company's legal obligation to its workers under various employment and labor laws depends primarily on whether workers are employees. For example, a company using an independent contractor is not required to:

- withhold income taxes from payments for service;
- pay minimum wages mandated by state or federal law;
- provide workers' compensation coverage or unemployment insurance;
- provide protections for various leaves of absences required by law; or
- provide a wide range of employee benefits, such as paid time off or a 401(k) retirement plan, that are offered voluntarily to the employer's employees as part of the terms or conditions of their employment.

As independent contractor use increased, government officials began to scrutinize asserted independent contractor relationships with increasing skepticism. Courts have also proven willing to overturn alleged independent contractor relationships that fail to satisfy the increasingly rigorous standards applied by federal and state agencies for classifying workers as independent contractors.

For companies, misclassification of a worker as an independent contractor can carry significant tax, wage, and benefit liabilities, as well as unanticipated and perhaps under-insured tort liability to third parties for injuries caused by the worker.

There are four principal tests used to determine whether a worker is an employee or an independent contractor:

1. the common-law rules or common-law control test;[1]
2. the economic realities test (with several variations);[2]

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[1] The common-law rules or common-law control test, informed in part by the Internal Revenue Service's 20 factors, focus on whether the engaging entity has the right to control the means by which the worker performs their services as well as the end results. *See generally* Treas. Reg. § 31.3121(d)-(1)(c); I.R.S., Internal Revenue Manual, *Technical Guidelines for Employment Tax Issues*, 4.23.5.4, *et seq*. (Nov. 22, 2017), *available at* https://www.irs.gov/irm/part4/irm_04-023-005r.html#d0e183.

[2] In addition to an evaluation of the right to control how the work is to be performed, the economic realities test also requires an examination of the underlying "economic realities" of the work relationship—namely, do the workers "depend upon someone else's business for the opportunity to render service or are [they] in business for themselves." *Brock v. Superior Care, Inc.*, 840 F.2d 1054, 1059 (2d Cir. 1988); *see also Rutherford Food Corp. v. McComb*, 331 U.S. 722 (1947).

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3. the hybrid test, combining the common law and economic realities test;[3] and
4. the ABC test (or variations of this test).[4]

For a detailed evaluation of the tests and how they apply to the various federal laws, see LITTLER ON CLASSIFYING WORKERS.

1.1(b) *State Guidelines on Classifying Workers*

In Michigan, as elsewhere, an individual who provides services to another for payment generally is considered either an independent contractor or an employee. For the most part, the distinction between an independent contractor and an employee is dependent on the applicable state law (see Table 1).

Table 1. State Tests for Classifying Workers

Purpose of Determining Employee Status	State Agency	Test to Apply
Fair Employment Practices Laws	Michigan Department of Civil Rights	Economic realities test, considering the following: 1. control; 2. wage payment; 3. hiring and firing rights; and 4. the responsibility for maintenance of discipline.[5] The test evaluates "the totality of the circumstances surrounding the work performed."[6]
Income Taxes	Michigan Department of Treasury	Internal Revenue Service (IRS) 20-factor test. The term *employee* is defined the same as "in section 3401(c) of the internal revenue

[3] Under the hybrid test, a court evaluates the entity's right to control the individual's work process, but also looks at additional factors related to the worker's economic situation—such as how the work relationship may be terminated, whether the worker receives yearly leave or accrues retirement benefits, and whether the entity pays social security taxes on the worker's behalf. *Wilde v. County of Kandiyohi*, 15 F.3d 103, 105 (8th Cir. 1994). Because the hybrid test focuses on traditional agency notions of control, as a general rule, it results in a narrower definition of employee than under a pure economic realities test. *Hopkins v. Cornerstone Am.*, 545 F.3d 338, 347 (5th Cir. 2008).

[4] Under a typical formulation of the ABC test, a worker is an independent contractor if: (A) there is an ABSENCE of control; (B) the BUSINESS is performed outside the usual course of business or performed away from the place of business; and (C) the work is CUSTOMARILY performed by independent contractors.

[5] *Hacker v. City of Mt. Clemens*, 2006 WL 2739342, at **1-2 (Mich. Ct. App. Sept. 26, 2006) ("Under the [Michigan civil rights law], a claim for employment discrimination may only be brought by an employee. An independent contractor is not an employee, and cannot bring an action under [the law].") (citations omitted).

[6] 2006 WL 273934, at *1 (citing *Chilingirian v. City of Fraser*, 486 N.W.2d 347 (Mich. Ct. App. 1992)).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		code. Any person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee."[7]
Unemployment Insurance	Michigan Unemployment Insurance Agency	Statutory, IRS 20-factor test. Effective January 1, 2013, the statute references the 20-factor test and states that "[a]n individual from whom an employer is required to withhold federal income tax is prima facie considered to perform services in employment."[8] Before that date, courts applied the economic realities test.[9] As noted in the statute, "[b]efore January 1, 2013, services performed by an individual for remuneration are not employment subject to this act, unless the individual is under the employer's control or direction as to the performance of the services both under a contract for hire and in fact."[10]
Wage & Hour Laws	Michigan Department of Labor and Economic Opportunity, Wage & Hour Division	Economic realities test, considering the considering the following: 1. control; 2. wage payment; 3. hiring, firing, and discipline rights; and

[7] MICH. COMP. LAWS § 206.8(2).

[8] MICH. COMP LAWS § 421.42(5) (referring to the U.S. Department of Treasury's Revenue Ruling 87-41); *see also* Michigan Dep't of Labor and Econ. Opportunity, Unemployment Ins. Agency, *Fact Sheet #155: The IRS 20-Factor Test Used by the UIA to Determine Classification as Independent Contractor versus Employee* (Apr. 2014), *available at* https://www.michigan.gov/documents/uia/155_-_Independent_Contractor_20-Factor_IRS_Test_Revised_01-08-13_408013_7.pdf. There are no state or administrative decisions applying the post January 2013 IRS 20-factor test.

[9] *See, e.g.*, *Capital Carpet Cleaning & Dye Co. v. Employment Sec. Comm'n*, 372 N.W.2d 332, 334 (Mich. Ct. App. 1985); *Industro-Motive Corp. v. Wilke*, 150 N.W.2d 544, 546 (Mich. Ct. App. 1967).

[10] MICH. COMP LAWS § 421.42(5).

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		4. the performance of duties as an integral part of the employer's business towards the accomplishment of a common goal.[11] The test considers a totality of the circumstances. No one factor is dispositive, and courts may consider other factors depending on the nature of the individual case.[12]
Workers' Compensation	Michigan Department of Labor and Economic Opportunity, Workers' Compensation Agency	Two statutory tests, utilizing the IRS 20-factor test.[13] First, an *employee* is defined by statute as "[e]very person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer."[14] Second, effective January 1, 2013, the statute additionally references the 20-factor

[11] *Buckley v. Professional Plaza Clinic Corp.*, 761 N.W.2d 284, 290-91 (Mich. Ct. App. 2008) (wage payment case).

[12] 761 N.W.2d at 291.

[13] Michigan Dep't of Labor and Econ. Opportunity, *Employer Insurance Requirements, Question 11 Who is an Independent Contractor?* (Oct. 2016), *available at* http://www.michigan.gov/documents/wca/wca_WC-PUB-002_431573_7.pdf (noting that "[a]n independent contractor is one who maintains a separate business and holds himself or herself out to and renders service to the public" and additionally, that the IRS 20-factor test "further defines the employee-employer relationship").

[14] MICH. COMP. LAWS § 418.161(1)(n). In *Auto-Owners Insurance Co. v. All Star Lawn Specialists Plus, Inc.*, the Michigan Supreme Court interpreted part of the definition of "employee" in section 418.161(1)(n), which defines *employee* as: "Every person performing service in the course of the trade, business, profession, or occupation of an employer at the time of the injury, if the person in relation to this service does not maintain a separate business, does not hold himself or herself out to and render service to the public, and is not an employer subject to this act." 857 N.W.2d 520 (Mich. 2014). The Supreme Court held that each provision of the statutory language must be met for an individual to be considered an employee; that is, if an individual: (1) does not maintain a separate business; (2) does not hold themself out to and render service to the public; and, (3) is not an employer subject to this act, then the person will be considered an employee. *Auto-Owners Insurance*, 857 N.W.2d at 522. However, in *Auto-Owners Insurance*, the Court did not consider the "On and after January 1, 2013" portion of the statutory definition of employee, as it did not exist during the period being considered.

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Table 1. State Tests for Classifying Workers		
Purpose of Determining Employee Status	**State Agency**	**Test to Apply**
		test and states that "[a]n individual from whom an employer is required to withhold federal income tax is prima facie considered to perform services in employment."[15] The statute also sets forth a mechanism for a business entity to request a determination through the Michigan administrative hearing system of whether one or more individuals "performing service for the entity in this state are in covered employment."[16]
Workplace Safety	Michigan Occupational Safety & Health	While Michigan has an approved state plan under the federal Occupational Safety and Health Act, there are no relevant statutory definitions or case law identifying a test for independent contractor status in this context.[17]

[15] MICH. COMP LAWS § 421.42(5) (referring to the U.S. Department of Treasury's Revenue Ruling 87-41); *see also* Michigan Dep't of Labor and Econ. Opportunity, Unemployment Ins. Agency, *Fact Sheet #155: The IRS 20-Factor Test Used by the UIA to Determine Classification as Independent Contractor versus Employee* (Apr. 2014), *available at* https://www.michigan.gov/documents/uia/155_-_Independent_Contractor_20-Factor_IRS_Test_Revised_01-08-13_408013_7.pdf. There are no state or administrative decisions applying the post January 2013 IRS 20-factor test.

[16] MICH. COMP. LAWS § 418.161(1)(n). A federal appellate court has held that the language regarding application of the IRS 20-factor test after January 1, 2013 did not replace the three-part test set forth in the beginning of the statute. *Max Trucking, L.L.C. v. Liberty Mut. Ins. Corp.*, 802 F.3d 793, 801-02 (6th Cir. 2015). The court reasoned that, when the 2013 amendment was published, the three-part statutory test was reenacted and published unchanged and without limitation. *Max Trucking, L.L.C.*, 802 F.3d at 801. The court also interpreted the 2013 amendment to limit use of the IRS 20-factor test to determinations made in administrative proceedings before the Michigan Administrative Hearing System, as set forth in the latter part of that amendment. 802 F.3d at 802.

[17] In *Michigan Occupational Safety and Health Administration v. Yoder Family Farm*, 2022 WL 3692783 (Mich. Ct. App. Aug. 25, 2022), a state appellate court reversed the holding of an administrative law judge and trial court that MIOSHA lacked jurisdiction to issue citations because a worker killed was not an employee, and "direct[ed] the Board of Health and Safety Compliance and Appeals to apply the economic reality test to the totality of the circumstances surrounding [] work on the Farm, including the following factors set forth in [*Buckley*]: '(1) the control of a worker's duties, (2) the payment of wages, (3) the right to hire and fire and the right to discipline, and (4) the performance of the duties as an integral part of the employer's business towards the accomplishment of a common goal.'" Additionally, the appellate court held "These factors are not exclusive, and the board may consider others it finds appropriate and consistent with the economic reality framework."

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1.2 Employment Eligibility & Verification Requirements

1.2(a) *Federal Guidelines on Employment Eligibility & Verification Requirements*

The federal Immigration Reform and Control Act of 1986 (IRCA) prohibits knowingly employing workers who are not authorized to work in the United States. Under IRCA, an employer must verify each new hire's identity and employment eligibility. Employers and employees must complete the U.S. Citizenship and Immigration Service's Employment Eligibility Verification form (Form I-9) to fulfill this requirement. The employer must ensure that: (1) the I-9 is complete; (2) the employee provides required documentation; and (3) the documentation appears on its face to be genuine and to relate to the employee. If an employee cannot present the required documents within three business days of hire, the employee cannot continue employment.

Although IRCA requires employers to review specified documents establishing an individual's eligibility to work, it provides no way for employers to verify the documentation's legitimacy. Accordingly, the federal government established the "E-Verify" program to allow employers to verify work authorization using a computerized registry. Employers that choose to participate in the program must enter into a Memorandum of Understanding with the Department of Homeland Security (DHS) which, among other things, specifically prohibits employers from using the program as a screening device. Participation in E-Verify is generally voluntary, except for federal contractors with prime federal contracts valued above the simplified acquisition threshold for work in the United States, and for subcontractors under those prime contracts where the subcontract value exceeds $3,500.[18]

Federal legislative attempts to address illegal immigration have been largely unsuccessful, leading some states to enact their own immigration initiatives. Whether states have the constitutional power to enact immigration-related laws or burden interstate commerce with requirements in addition to those imposed by IRCA largely depends on how a state law intends to use an individual's immigration status. Accordingly, state and local immigration laws have faced legal challenges.[19] An increasing number of states have enacted immigration-related laws, many of which mandate E-Verify usage. These state law E-Verify provisions, most of which include enforcement provisions that penalize employers through license suspension or revocation for knowingly or intentionally employing undocumented workers, have survived constitutional challenges.[20]

For more information on these topics, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.

[18] 48 C.F.R. §§ 22.1803, 52.212-5, and 52.222-54 (contracts for commercially available off-the-shelf items and contracts with a period of performance of less than 120 days are excluded from the E-Verify requirement). For additional information, see LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS.

[19] *See, e.g.*, *Lozano v. Hazelton*, 496 F. Supp. 2d 477 (E.D. Pa. 2007), *aff'd*, 724 F.3d 297 (3d Cir. 2013) (striking down a municipal ordinance requiring proof of immigration status for lease and employment relationship purposes).

[20] *See Chamber of Commerce of the U.S. v. Whiting*, 563 U.S. 582 (2011).

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1.2(b) *State Guidelines on Employment Eligibility & Verification Requirements*

1.2(b)(i) *Private Employers*

Michigan does not have a generally applicable employment eligibility or verification statute. Therefore, private-sector employers in Michigan should follow federal law requirements regarding employment eligibility and verification.

1.2(b)(ii) *State Contractors*

When evaluating contract proposals, the Michigan Department of Management and Budget considers, among other things, whether a proposal by a vendor to provide services using employees, contractors, subcontractors, or other individuals who are not citizens of the United States, legal resident aliens, or individuals with a valid visa would be detrimental to the state, its residents, or the state's economy.[21]

E-Verify Requirements. Some state agencies, as well as contractors and subcontractors of the Michigan Department of Transportation with contracts for construction, maintenance, and engineering services, must use E-Verify. State contracts also must contain a provision informing such contractors that they may be subject to a state audit to ensure E-Verify use.[22]

1.3 Restrictions on Background Screening & Privacy Rights in Hiring

1.3(a) *Restrictions on Employer Inquiries About & Use of Criminal History*

1.3(a)(i) *Federal Guidelines on Employer Inquiries About & Use of Criminal History*

There is no applicable federal law restricting employer inquiries into an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued enforcement guidance pursuant to its authority under Title VII of the Civil Rights Act of 1964 ("Title VII").[23] While there is uncertainty about the level of deference courts will afford the EEOC's guidance, employers should consider the EEOC's guidance related to arrest and conviction records when designing screening policies and practices. The EEOC provides employers with its view of "best practices" for implementing arrest or conviction screening policies in its guidance. In general, the EEOC's positions are:

1. **Arrest Records.** An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. While, from the EEOC's perspective, an employer cannot rely on arrest records alone to deny employment, an employer can consider the underlying conduct related to the arrest if that conduct makes the person unfit for the particular position.
2. **Conviction Records.** An employer with a policy that excludes persons from employment based on criminal convictions must show that the policy effectively links specific criminal conduct with risks related to the particular job's duties. The EEOC typically will consider three factors when analyzing an employer's policy: (1) the nature and gravity of the offense or

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[21] 2007 Mich. Pub. Acts 127.

[22] 2012 Mich. Pub. Acts 200.

[23] EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e et seq.* (Apr. 25, 2012), *available at* https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm.

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conduct; (2) the time that has passed since the offense, conduct, and/or completion of the sentence; and (3) the nature of the job held or sought.

Employers should also familiarize themselves with the federal Fair Credit Reporting Act (FCRA), discussed in **1.2(b)(i)**. The FCRA does not restrict conviction-reporting *per se*, but impacts the reporting and consideration of criminal history information in other important ways.

For additional information on these topics, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

1.3(a)(ii) *State Guidelines on Employer's Use of Arrest Records*

Under Michigan law, as part of the job application process or in connection with the terms and conditions of employment, an employer or employment agency may not inquire about, make, or maintain a record of a *misdemeanor arrest, detention, or disposition that did not result in conviction*.[24] Moreover, a person will be found not guilty of perjury or otherwise giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold under this law.[25] However, employers may inquire into pending *felony charges* before a conviction or dismissal.[26]

Likewise, the Michigan Department of Civil Rights states that during preemployment inquiries, it is illegal for employers, except law enforcement agencies, to ask applicants about any arrests which did not result in conviction. However, the department takes the position that an employer may ask whether there are any felony charges pending against the applicant.[27]

Ban-the-Box Law. Michigan has not implemented a state "ban-the-box" law covering private employers.

Local Law. Under the Ann Arbor Non-Discrimination Ordinance, an employer with three or more employees doing business_within the City of Ann Arbor may not discriminate in the employment of any individual on the basis of the individual's arrest record, except for a bona fide occupational qualification or bona fide business necessity.[28] *Arrest record* is defined as information indicating that an individual has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged

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[24] MICH. COMP. LAWS § 37.2205a(1). However, case law suggests that information about arrests may be used if obtained from other sources. *See Aho v. Department of Corrs.*, 688 N.W.2d 104, 111 (Mich. Ct. App. 2004) (holding that because the employer "knew of plaintiff's arrest through other sources, apart from its retention of his actual arrest record," there was no causation between the employer's violation of the statute and the alleged harm). Case law also suggests that the state prohibition on use of such arrest records may be preempted by federal laws that require employers to monitor employee conduct in certain occupations. *Roddy v. Grand Trunk W. R.R.*, 2007 WL 258310 (Mich. Ct. App. Jan. 30, 2007) (addressing federal law prohibiting railroad workers from using illegal controlled substances).

[25] MICH. COMP. LAWS § 37.2205a(1).

[26] MICH. COMP. LAWS § 37.2205a(1).

[27] Michigan Dep't of Civil Rights, *Pre-Employment Inquiry Guide* (rev. June 2012) (further acknowledging that certain employers are required to conduct criminal history background checks, but noting that unless required by law, it is a violation of Title VII of the Civil Rights Act of 1964 "for employers to have a blanket policy of not hiring or accepting applications from anyone with a criminal conviction"), *available at* http://www.michigan.gov/documents/mdcr/Preemploymentguide62012_388403_7.pdf.

[28] ANN ARBOR, MICH., CODE OF ORDINANCES §§ 9:154, 9:156, 9-157.

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with, indicted, or tried for any felony, misdemeanor, or other offense by any law enforcement or military authority.[29]

Bona fide occupational qualification is defined as an otherwise protected characteristic which is reasonably necessary to the normal performance of the particular position in a particular business or enterprise. A "bona fide business necessity" does not arise due to a mere inconvenience or because of suspected objection to such a person by neighbors, customers, or other persons.[30]

1.3(a)(iii) *State Guidelines on Employer's Use of Conviction Records*

The Michigan Department of Civil Rights takes the position that an employer may ask applicants whether they have ever been convicted of a crime.[31] Moreover, Michigan places no statutory restrictions on a private employer's use of conviction records.

1.3(a)(iv) *State Guidelines on Employer's Use of Sealed or Expunged Criminal Records*

A person whose conviction has been set aside is considered not to have been convicted, except as provided for in the statute.[32] Any person besides the applicant or victim, who knows or should know that a conviction was set aside and who divulges, uses, or publishes information concerning such is guilty of a misdemeanor.[33]

Juvenile Records. Likewise, where an adjudication of a juvenile offense has been set aside, the person is considered not to have been previously adjudicated. Any person, other than the applicant, who knows or should know that a juvenile adjudication was set aside, is guilty of a misdemeanor if the person uses that information.[34]

1.3(a)(v) *State Enforcement, Remedies & Penalties*

A person alleging a violation of the provisions regarding arrest records may bring a civil action against an employer for injunctive relief, damages, or both.[35]

1.3(b) *Restrictions on Credit Checks*

1.3(b)(i) *Federal Guidelines on Employer's Use of Credit Information & History*

The Fair Credit Reporting Act (FCRA). The FCRA[36] governs an employer's acquisition and use of virtually any type of information gathered by a "consumer reporting agency"[37] regarding job applicants for use in

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[29] ANN ARBOR, MICH., CODE OF ORDINANCES § 9:151.

[30] ANN ARBOR, MICH. CODE OF ORDINANCES §§ 9:151; 9:156.

[31] Michigan Dep't of Civil Rights, *Pre-Employment Inquiry Guide* (rev. June 2012), *available at* http://www.michigan.gov/documents/mdcr/Preemploymentguide62012_388403_7.pdf.

[32] MICH. COMP. LAWS § 780.622(1).

[33] MICH. COMP. LAWS § 780.623(5).

[34] MICH. COMP. LAWS § 712A.18e(11), (16).

[35] MICH. COMP. LAWS § 37.2801.

[36] 15 U.S.C. §§ 1681 *et seq*.

[37] A *consumer reporting agency* is any person or entity that regularly collects credit or other information about consumers to provide "consumer reports" for third persons. 15 U.S.C. § 1681a(f). A *consumer report* is any communication by a consumer reporting agency bearing on an individual's "creditworthiness, credit standing,

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hiring decisions or regarding employees for use in decisions concerning retention, promotion, or termination. Preemployment reports created by a consumer reporting agency (such as credit reports, criminal record reports, and department of motor vehicle reports) are subject to the FCRA, along with any other consumer report used for employment purposes.

The FCRA establishes procedures that an employer must strictly follow when using a consumer report for employment purposes. For example, before requesting a consumer report from a consumer reporting agency, the employer must notify the applicant or employee in writing that a consumer report will be requested and obtain the applicant's or employee's written authorization before obtaining the report. An employer that intends to take an adverse employment action, such as refusing to hire the applicant, based wholly or partly on information contained in a consumer report must also follow certain notification requirements. For additional information on the FCRA, see **LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING**.

Many states have enacted their own version of the FCRA, referred to as "mini-FCRAs." While these laws often mirror the FCRA's requirements, there may be important distinctions between federal and state requirements.

Discrimination Concerns. While federal law does not prevent employers from asking about financial information provided they follow the FCRA, as noted above, federal antidiscrimination law prohibits employers from applying a financial requirement differently based on an individual's protected status—*e.g.*, race, national origin, religion, sex, disability, age, or genetic information. The EEOC also cautions that an employer must not have a financial requirement "if it *does not help the employer to accurately identify* responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular [protected category]."[38]

1.3(b)(ii) *State Guidelines on Employer's Use of Credit Information & History*

Michigan does not have a mini-FCRA law, and there are no additional state provisions specifically restricting a private employer's use of credit information and history.

1.3(c) *Restrictions on Access to Applicants' Social Media Accounts*

1.3(c)(i) *Federal Guidelines on Access to Applicants' Social Media Accounts*

There is no federal law governing an employer's ability to request access to applicants' or employees' social media accounts. However, various federal laws, or federal agencies' interpretations and enforcement of these laws, may impact employer actions. For example:

- Preemployment action taken against an applicant, or post-employment action taken against an employee, based on information discovered via social media may run afoul of federal civil rights law (*e.g.*, Title VII, the Americans with Disabilities Act, and the Age Discrimination in Employment Act).
- The National Labor Relations Board, which is charged with enforcing federal labor laws, has taken an active interest in employers' social media policies and practices, and has concluded

character, general reputation, personal characteristics or mode of living" that is used for employment purposes. 15 U.S.C. § 1681a(d).

[38] EEOC, *Pre-Employment Inquiries and Financial Information*, *available at* https://www.eeoc.gov/laws/practices/financial_information.cfm (emphasis in original).

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in many instances that, regardless of whether the workplace is unionized, the existence of such a policy or an adverse employment action taken against an employee based on the employee's violation of the policy can violate the National Labor Relations Act.

- Accessing an individual's social media account without permission may potentially violate the federal Computer Fraud and Abuse Act or the Stored Communications Act.

For additional information on federal law related to background screening, see LITTLER ON BACKGROUND SCREENING & PRIVACY RIGHTS IN HIRING.

1.3(c)(ii) *State Guidelines on Access to Applicants' Social Media Accounts*

A Michigan employer cannot request that an employee or an applicant for employment grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal internet account.[39] An employer also cannot discharge, discipline, fail to hire, or otherwise penalize an employee or applicant for employment for failing to grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal internet account.[40]

Personal internet account "means an account created via a bounded system established by an internet-based service that requires a user to input or store access information via an electronic device to view, create, utilize, or edit the user's account information, profile, display, communications, or stored data."[41] *Access information* "means username, password, login information, or other security information that protects access to a personal Internet account."[42]

Exceptions. An employer can view, access, or use information about an employee or applicant that can be obtained without any required access information or that is available in the public domain.[43] The law also does not prohibit or restrict an employer from complying with a duty to screen employees or applicants prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization, as defined by the Securities and Exchange Act of 1934.[44]

There are additional exceptions for investigations and discipline. First, an employer can conduct an investigation or require an employee to cooperate in an investigation:

- for the purpose of ensuring compliance with applicable laws, regulatory requirements, or prohibitions against work-related employee misconduct, if there is specific information about activity on the employee's personal internet account; or
- if the employer has specific information about an unauthorized transfer of the employer's proprietary information, confidential information, or financial data to an employee's personal internet account.[45]

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[39] MICH. COMP. LAWS § 37.273(a).

[40] MICH. COMP. LAWS § 37.273(b).

[41] MICH. COMP. LAWS § 37.272(d).

[42] MICH. COMP. LAWS § 37.272(a).

[43] MICH. COMP. LAWS § 37.275(3).

[44] MICH. COMP. LAWS § 37.275(2).

[45] MICH. COMP. LAWS § 37.275(c).

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Second, an employer can discipline or discharge an employee for transferring the employer's proprietary or confidential information or financial data to an employee's personal internet account without the employer's authorization.[46]

Rules for Employer-Provided Devices & Online Accounts. An employer can request or require an employee to disclose access information to the employer to gain access to or operate any of the following: (1) an electronic communications device paid for in whole or in part by the employer; or (2) an account or service provided by the employer, obtained by virtue of the employee's employment relationship with the employer, or used for the employer's business purposes.[47] Moreover, an employer can restrict or prohibit an employee's access to certain websites while using an electronic communications device paid for in whole or in part by the employer or while using an employer's network or resources, in accordance with state and federal law.[48] Additionally, the social media law allows an employer to monitor, review, or access electronic data stored on an electronic communications device paid for in whole or in part by the employer, or traveling through or stored on an employer's network.[49]

Liability. Employers have no duty to search or monitor the activity of a personal internet account, and are not liable under the law for failing to request or require that an employee or an applicant for employment grant access to, allow observation of, or disclose information that allows access to or observation of the individual's personal internet account.[50] An affirmative defense can be raised by employers that they acted to comply with federal or Michigan law requirements.[51]

1.3(c)(iii) *State Enforcement, Remedies & Penalties*

An aggrieved individual can file a civil action to enjoin a violation under the social media law,[52] and if successful, may recover damages of not more than $1,000, plus reasonable attorneys' fees and court costs.[53] Not later than 60 days before filing a civil action for damages, or 60 days before adding a claim for damages to an action seeking injunctive relief, the individual must make a written demand of the alleged violator for not more than $1,000. The written demand must include reasonable documentation of the violation. The written demand and documentation must either be served in the manner provided by law for service of process in civil actions or mailed by certified mail with sufficient postage affixed and addressed to the alleged violator at their residence, principal office, or place of business. An action can be brought in the district court in the county where the alleged violation occurred or the county where the violator resides or has their principal place of business.[54]

A violation of the social media law also is a misdemeanor, punishable by a fine of not more than $1,000.[55]

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46 MICH. COMP. LAWS § 37.275(1)(b).

47 MICH. COMP. LAWS § 37.275(1)(a).

48 MICH. COMP. LAWS § 37.275(d).

49 MICH. COMP. LAWS § 37.275(e).

50 MICH. COMP. LAWS § 37.277.

51 MICH. COMP. LAWS § 37.278.

52 Specifically, under Michigan Compiled Laws section 37.273.

53 MICH. COMP. LAWS § 37.278(2).

54 MICH. COMP. LAWS § 37.278(2).

55 MICH. COMP. LAWS § 37.278(1).

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1.3(d) *Polygraph / Lie Detector Testing Restrictions*

1.3(d)(i) *Federal Guidelines on Polygraph Examinations*

The federal Employee Polygraph Protection Act (EPPA) imposes severe restrictions on using lie detector tests.[56] The law bars most private-sector employers from requiring, requesting, or suggesting that an employee or job applicant submit to a polygraph test, and from using or accepting the results of such a test.

The EPPA further prohibits employers from disciplining, discharging, or discriminating against any employee or applicant:

- for refusing to take a lie detector test;
- based on the results of such a test; and
- for taking any actions to preserve employee rights under the law.

There are some limited exceptions to the general ban. The exception applicable to most private employers allows a covered employer to test current employees reasonably suspected of involvement in a workplace incident that resulted in economic loss or injury to the employer's business. There is also a narrow exemption for prospective employees of security guard firms and companies that manufacture, distribute, or dispense controlled substances.

Notably, the EPPA prohibits only mechanical or electrical devices, not paper-and-pencil tests, chemical tests, or other nonmechanical or nonelectrical means that purport to measure an individual's honesty. For more information on federal restrictions on polygraph tests, including specific procedural and notice requirements and disclosure prohibitions, see LITTLER ON EMPLOYMENT TESTING.

Most states have laws that mirror the federal law. Some of these state laws place greater restrictions on testing by prohibiting lie detector "or similar" tests, such as pencil-and-paper honesty tests.

1.3(d)(ii) *State Guidelines on Polygraph Examinations*

In Michigan, employers or employment agencies cannot, as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, do any of the following:

- request or require an employee or applicant take or submit to a polygraph examination;
- administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant;
- require an employee or applicant to expressly or impliedly waive their rights under the law; or
- refuse to hire an applicant for refusing or declining a polygraph examination.[57]

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[56] 29 U.S.C. §§ 2001 to 2009; *see also* U.S. Dep't of Labor, *Other Workplace Standards: Lie Detector Tests*, *available at* https://webapps.dol.gov/elaws/elg/eppa.htm.

[57] MICH. COMP. LAWS § 37.203(1), (5).

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A *polygraph examination* is a psychological stress evaluator examination or other procedure that "involves the use of instrumentation or a mechanical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these; including a lie detector test, psychological stress evaluator examination, or similar test."[58] *Psychological stress evaluator examination* means any of the following: (1) the questioning or interviewing of an individual for the purpose of subjecting the individual's statements to analysis by a psychological stress evaluator; (2) the recording of statements made by an individual for the purpose of subjecting those statements to analysis by a psychological stress evaluator; or (3) the analysis of statements made by an individual to determine the truth or falsity of the statements by the use of a psychological stress evaluator.[59]

Voluntary Examinations. However, the law does not prohibit an employee or applicant from voluntarily requesting a polygraph examination.[60] If such a request is made:

- Employers or employment agencies can administer a polygraph examination.
- The employee or applicant must receive a copy of the law before they voluntarily take the polygraph examination.
- An intern or an unlicensed examiner cannot be used to administer the test.
- The examiner must:
  - not ask questions prohibited by law;
  - provide the individual with a copy of the examination results and all reports or analyses done by the examiner which are shared with the employer;
  - inform the individual of all specific question areas to be explored before their actual exploration during the examination; and
  - inform the individual of all of the following:
    - that the individual has the right to accept or refuse the examination;
    - that the individual has the right to halt an examination in progress at any time;
    - that the individual is not required to answer any questions or give any information; and
    - that any information the individual volunteers could be used against the individual or made available to the employer, unless otherwise specified and agreed to in writing by the individual.[61]

Other Restrictions & Requirements. Employers or employment agencies cannot take any action against an employee or applicant based upon an alleged or actual opinion that the individual did not tell the truth during a polygraph examination.[62]

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[58] MICH. COMP. LAWS § 37.202(f).

[59] MICH. COMP. LAWS § 37.202(h).

[60] MICH. COMP. LAWS § 37.203(5).

[61] MICH. COMP. LAWS § 37.203.

[62] MICH. COMP. LAWS § 37.204.

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Additionally, employers or employment agencies cannot share with any other person information which communicates the results or analysis of an individual's polygraph examination or the fact that the individual refused to submit to a polygraph examination.[63]

Any information obtained from an individual during a polygraph examination is inadmissible in a criminal proceeding.[64]

1.3(d)(iii) *State Enforcement, Remedies & Penalties*

A violation of the polygraph provisions is a misdemeanor, punishable by a fine, imprisonment, or both.[65] An aggrieved individual can file a private lawsuit for injunctive relief or damages, or both. Damages include damages for injury or loss caused by each violation and reasonable attorneys' fees. If an employee is discharged in violation of the law, damages include double the wages lost.[66]

1.3(e) *Drug & Alcohol Testing of Applicants*

1.3(e)(i) *Federal Guidelines on Drug & Alcohol Testing of Applicants*

Whether an employer must implement a drug testing program for its employees under federal law is often determined by the industry in which it operates. For example, the Omnibus Transportation Employee Testing Act requires testing certain applicants and employees in the transportation industries.[67] The Drug-Free Workplace Act of 1988 also requires some federal contractors and all federal grantees (but not subcontractors or subgrantees) to certify to the appropriate federal agency that they are providing a drug-free workplace.[68] Employers not legally mandated to implement workplace substance abuse and drug and alcohol testing policies may still do so to promote workplace safety, deter illegal drug use, and diminish absenteeism and turnover. For more information on drug testing requirements under federal law, see LITTLER ON EMPLOYMENT TESTING.

For the most part, workplace drug and alcohol testing is governed by state law, and state laws differ dramatically in this area and continue to evolve.

1.3(e)(ii) *State Guidelines on Drug & Alcohol Testing of Applicants*

Michigan law contains no express provisions regulating preemployment drug or alcohol screening by private employers.

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[63] MICH. COMP. LAWS § 37.205.

[64] MICH. COMP. LAWS § 37.206.

[65] MICH. COMP. LAWS § 37.208.

[66] MICH. COMP. LAWS § 37.207.

[67] These industries are covered by the Federal Aviation Administration (FAA); the Federal Motor Carrier Safety Administration (FMSCA); the Federal Railroad Administration (FRA); the Federal Transit Administration (FTA); and the Pipeline and Hazardous Materials Safety Administration (PHMSA). In addition, the U.S. Department of Defense, the Coast Guard, and the Nuclear Regulatory Commission, as well as other government agencies, have adopted regulations requiring mariners, employers, and contractors to maintain a drug-free workplace.

[68] 41 U.S.C. §§ 8101 *et seq.*; *see also* 48 C.F.R. §§ 23.500 *et seq*.

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1.3(f) *Additional State Guidelines on Preemployment Conduct*

1.3(f)(i) *State Restrictions on Job Application Fees, Deductions, or Other Charges*

An employer, agent or representative of the employer, or other person with the authority to hire, employ, or direct employees may not demand or receive, directly or indirectly, a fee, gift, tip, gratuity, or other remuneration as a condition of employment or continuing employment. This does not apply to any fees collected by licensed employment agencies. Moreover, an employer may not require an employee or applicant to make charitable contributions as a condition of employment, except for a contribution required or expressly permitted by law or by a collective bargaining agreement.[69]

Michigan employers may not force new hires or employees returning from leave of absences to pay for medical examinations, photographs, or fingerprinting that the employer requests.[70]

2. TIME OF HIRE

2.1 Documentation to Provide at Hire

2.1(a) *Federal Guidelines on Hire Documentation*

Table 2 lists the documents that must be provided at the time of hire under federal law.

Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents: Affordable Care Act (ACA)	Currently, employers covered under the Fair Labor Standards Act (FLSA) must provide to each employee, at the time of hire, written notice: • informing the employee of the existence of an insurance exchange, including a description of the services provided by such exchange, and the manner in which the employee may contact the exchange to request assistance; • that if the employer-plan's share of the total allowed costs of benefits provided under the plan is less than 60% of such costs, the employee may be eligible for a premium tax credit under section 36B of the Internal Revenue Code of 1986[71] and a cost-sharing reduction under section 1402 of the Patient Protection and Affordable Care Act[72] if the employee purchases a qualified health plan through the exchange; and • that if the employee purchases a qualified health plan through the exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a

[69] MICH. COMP. LAWS § 408.478.

[70] MICH. COMP. LAWS § 750.354a.

[71] 26 U.S.C. § 36B.

[72] 42 U.S.C. § 18071.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	portion of such contribution may be excludable from income for federal income tax purposes.[73] The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan.[74]
Benefits & Leave Documents: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Employers or group health plan administrators must provide written notice to employees and their spouses outlining their COBRA rights no later than 90 days after employees and spouses become covered under group health plans. Employers or plan administrators can develop their own COBRA rights notice or use the COBRA Model General Notice.[75] Employers or plan administrators can send COBRA rights notices through first-class mail, electronic distribution, or other means that ensure receipt. If employees and their spouses live at the same address, employers or plan administrators can mail one COBRA rights notice addressed to both individuals; alternatively, if employees and their spouses do not live at the same address, employers or plan administrators must send separate COBRA rights notices to each address.[76]
Benefits & Leave Documents: Family and Medical Leave Act (FMLA)	In addition to posting requirements, if an FMLA-covered employer has any eligible employees, it must provide a general notice to each employee by including the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist, or by distributing a copy of the general notice to each new employee upon hiring.[77] In either case, distribution may be accomplished electronically. Employers may use a format other than the FMLA poster as a model notice, if the information provided includes, at a minimum, all of the information contained in that poster.[78]

[73] 29 U.S.C. § 218b.

[74] Model notices are available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/affordable-care-act/for-employers-and-advisers/coverage-options-notice.

[75] The model notice is available in English and Spanish at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[76] 29 C.F.R. § 2590.606-1.

[77] 29 C.F.R. § 825.300(a).

[78] The U.S. Department of Labor's Wage & Hour Division's model FMLA poster, which satisfies the notice requirement, is available at https://www.dol.gov/WHD/fmla/index.htm.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	Where an employer's workforce is comprised of a significant portion of workers who are not literate in English, the employer must provide the general notice in a language in which the employees are literate. Employers furnishing FMLA notices to sensory-impaired individuals must also comply with all applicable requirements under federal or state law.[79]
Immigration Documents: Form I-9	Employers must ensure that individuals properly complete Form I-9 section 1 ("Employee Information and Verification") at the time of hire and sign the attestation with a handwritten or electronic signature. Also, individuals must present employers documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, ensure that it appears to be genuine and relates to the individual, and complete Form I-9, section 2 ("Employer Review and Verification"). Employers must also, within three business days of hiring, sign the attestation with a handwritten or electronic signature. Employers that hire individuals for a period of less than three business days must comply with these requirements at the time of hire.[80] For additional information on these requirements, see LITTLER ON I-9 COMPLIANCE & WORK AUTHORIZATION VISAS.
Tax Documents	On or before the date employment begins, employees must furnish employers with a signed withholding exemption certificate (Form W-4) relating to their marital status and the number of withholding exemptions they claim.[81]
Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents	Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice requirement by posting notice where employers customarily place notices for employees.[82]
Wage & Hour Documents	To qualify for the federal tip credit, employers must notify tipped employees: (1) of the minimum cash wage that will be paid; (2) of the tip credit amount, which cannot exceed the value of the tips actually received by the employee; (3) that all tips received by the tipped employee must be retained by the employee except for a valid tip

[79] 29 C.F.R. § 825.300(a).

[80] *See generally* 8 C.F.R. § 274a.2. The form is available at https://www.uscis.gov/i-9.

[81] 26 C.F.R. § 31.3402(f)(2)-1. The IRS provides this form at https://www.irs.gov/pub/irs-pdf/fw4.pdf.

[82] 38 U.S.C. § 4334. This notice is available at https://www.dol.gov/sites/dolgov/files/VETS/legacy/files/USERRA_Private.pdf.

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Table 2. Federal Documents to Provide at Hire	
Category	**Notes**
	pooling arrangement limited to employees who customarily and regularly receive tips; and (4) that the tip credit will not apply to any employee who has not been informed of these requirements.[83]

2.1(b) *State Guidelines on Hire Documentation*

Table 3 lists the documents that must be provided at the time of hire under state law.

Table 3. State Documents to Provide at Hire	
Category	**Notes**
Benefits & Leave Documents	No notice requirement located.[84]
Fair Employment Practices Documents	No notice requirement located.
Tax Documents	Employees must file a signed withholding exemption certificate (Form MI-W4) with their employers.[85]
Wage & Hour Documents	A lower, minimum hourly cash wage rate may be paid to a tipped employee only if the employee was informed by the employer of the tip credit provisions.[86]

2.2 New Hire Reporting Requirements

2.2(a) *Federal Guidelines on New Hire Reporting*

The federal New Hire Reporting Program requires all states to establish new hire reporting laws that comply with federal requirements.[87] State new hire reporting laws must include these minimum requirements:

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[83] 29 C.F.R. § 531.59.

[84] On January 26, 2023, a state appellate court reversed a July 2022 decision by a state judge held that the law concerning the minimum wage and tipped employees as summarized below was void and that a prior version of the law that existed before the legislature significantly overhauled was the law. The appellate court decision means that the law as summarized below remains *the* law. The losing side has appealed the decision to the state supreme court, which, on June 20, 2023, agreed to hear the case. When more information exists, an update to the following summaries will occur.

[85] MICH. ADMIN. CODE r. 206.24. Information about withholding, as well as Form MI-W4 and its instructions, are available at https://www.michigan.gov/taxes/biz-forms/withholding/2023-withholding-tax-forms.

[86] MICH. COMP. LAWS § 408.414d. Employers must create their own notices to satisfy this requirement.

[87] The New Hire Reporting Program is part of the Personal Responsibility and Work Opportunity Act of 1996. 42 U.S.C. §§ 651 to 669.

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1. employers must report to the appropriate state agency the employee's name, address, and Social Security number, as well as the employer's name, address, and federal tax identification number provided by the Internal Revenue Service;
2. employers may file the report by first-class mail, electronically, or magnetically;
3. if the report is transmitted by first-class mail, the report must be made not later than 20 days after the date of hire;
4. if the report is transmitted electronically or magnetically, the employer may report no later than 20 days following the date of hire or through two monthly transmissions not less than 12 days nor more than 16 days apart;
5. the format of the report must be a Form W-4 or, at the option of the employer, an equivalent form; and
6. the maximum penalty a state may set for failure to comply with the state new hire law is $25 (which increases to $500 if the failure to comply is the result of a conspiracy between the employer and the employee to not supply the required report or to supply a false or incomplete report).[88]

These are only the minimum requirements that state new hire reporting laws must satisfy. States may enact new hire reporting laws that, for example, require additional information to be submitted or require a shorter reporting timeframe. Many states have also developed their own reporting form; however, its use is optional.

Multistate Employers. The New Hire Reporting Program includes a simplified reporting method for multistate employers. The statute defines *multistate employers* as employers with employees in two or more states and that file new hire reports either electronically or magnetically. The federal statute permits multistate employers to designate one state to which they will transmit all of their reports twice per month, rather than filing new hire reports in each state. An employer that designates one state must notify the Secretary of the U.S. Department of Health and Human Services (HHS) in writing. When notifying the HHS, the multistate employer must include the following information:

- Federal Employer Identification Number (FEIN);
- employer's name, address, and telephone number related to the FEIN;
- state selected for reporting purposes;
- other states in which the company has employees;
- the corporate contact information (name, title, phone, email, and fax number); and
- the signature of person providing the information.

If the company is reporting new hires on behalf of subsidiaries operating under different names and FEINs, it must list the names and FEINs, and the states where those subsidiaries have employees working.

Multistate employers can notify the HHS by mail, fax, or online as follows:

[88] 42 U.S.C. § 653a.

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Table 4. Multistate Employer New Hire Information	
Contact By Mail or Fax	**Contact Online**
Department of Health and Human Services Administration for Children and Families Office of Child Support Enforcement Multi-State Employer Registration Box 509 Randallstown, MD 21133 Fax: (410) 277-9325	Register online by submitting a multistate employer notification form over the internet.[89] Multistate employers can receive assistance with registration as a multistate employer from the Multistate Help Desk by calling (410) 277-9470, 9:00 A.M. to 5:00 P.M., Eastern Time.

2.2(b) *State Guidelines on New Hire Reporting*

Michigan does not have state statutory requirements differing from the federal new hire reporting requirements. The Michigan Department of Health and Human Services, Child Support Division provides ways for Michigan residents to comply with federal reporting requirements.[90]

Who Must Be Reported. An employer must report new employees who reside or work in Michigan to whom the employer anticipates paying earnings. Employees must be reported even if they work only one day and are fired or terminated prior to the employer fulfilling the new hire reporting requirement. Employers must also report any employee who remains on the payroll during a break in service or gap in pay, and then returns to work after 60 days. This includes teachers, substitutes, seasonal workers, etc.

Report Timeframe. Employees must be reported within 20 days after being hired or rehired or returning to work. Employers that submit reports magnetically or electronically must submit the reports in two monthly transmissions not more than 16 days apart.

Information Required. The report should include the employee's full name, address, Social Security number, date of hire, and state of hire (only if reporting as a multistate employer). Optional information includes: date of birth and driver's license. The employer's corporate name, address (where income withholding orders should be sent), and Federal Employer Identification Number (FEIN)[91] must also be reported. Optional information includes the employer's telephone number, fax number, email address, contact name, and State Employer Identification Number.

Form & Submission of Report. The following must be included with the report:

- New Hire Reporting Form;
- federal Form W-4; or

[89] HHS offers the form online at http://www.acf.hhs.gov/programs/css/resource/multistate-employer-registration-form-instructions.

[90] Michigan New Hires Operation Center, *New Hire Reporting: State and Federal Requirements & FAQs, available at* https://www.mi-newhire.com/#/public/info/user-guide-newhires.

[91] If the employer has more than one FEIN, provide the FEIN used to report quarterly wage information.

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- a printed list (it should contain all the required information on the New Hire Reporting Form, and be in at least ten-point font size and have the employer's name, FEIN, and address clearly displayed at the top of the report).

Reports can be submitted online via the state's online reporting website. Alternatively, employers can create their own electronic new hire reports.

Employers can send new hire data files in a variety of ways, including transferring files through the state's website, through internet connection using File Transfer Protocol (FTP), or mailing reports to the Michigan New Hires Operation Center on diskette. Paper new hire reports may either be faxed or mailed to the Michigan New Hires Operation Center.

Location to Send Information.
Michigan New Hires Operation Center
P.O. Box 85010
Lansing, MI 48908-5010
Tel: (800) 524-9846
Fax: (877) 318-1659
https://www.mi-newhire.com/#/core/landing-layout/public-landing[92]

2.3 Restrictive Covenants, Trade Secrets & Protection of Business Information

2.3(a) *Federal Guidelines on Restrictive Covenants & Trade Secrets*

Restrictive covenants are limitations placed on an employee's conduct that remain in force after the individual's employment has ended. Post-employment restrictions are designed to protect the employer and typically prevent an individual from disclosing the employer's confidential information or soliciting the employer's employees or customers. These restrictions may also prohibit individuals from engaging in competitive employment, including competitive self-employment, for a specific time period after the employment relationship ends. There is no federal law governing these types of restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests is dependent upon applicable state law and the type of relationship or covenant involved.

As a general rule, a covenant restraining competition (referred to as a "noncompete") is more likely to be viewed critically because restraints of trade are generally disfavored. The typical exception to this general rule is a reasonable restraint that has a legitimate business purpose, such as the protection of trade secrets, confidential information, customer relationships, business goodwill, training, or the sale of a business. Notwithstanding, state laws vary widely regarding which of these interests can be protected through a restrictive covenant. Even where states agree on the interest that can be protected, they may vary on what is seen as a reasonable and enforceable provision for such protection.

Protections against trade secret misappropriation are also available to employers. Until 2016, trade secrets were the only form of intellectual property (*i.e.*, copyrights, patents, trademarks) not predominately governed by federal law. However, the Defend Trade Secrets Act of 2016 (DTSA) now provides a federal court civil remedy and original (but not exclusive) jurisdiction in federal court for claims

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[92] Michigan New Hires Operation Center, *Reporting Basics, available at* https://www.mi-newhire.com/#/core/landing-layout/public-landing.

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of trade secret misappropriation.[93] As such, the DTSA provides trade secret owners a uniform federal law under which to pursue such claims. The DTSA operates alongside more limited existing protections under the federal Economic Espionage Act of 1996 and the Computer Fraud and Abuse Act, as well as through state laws adopting the Uniform Trade Secrets Act (UTSA).

For more information on these topics, see **LITTLER ON PROTECTION OF BUSINESS INFORMATION & RESTRICTIVE COVENANTS**.

2.3(b) *State Guidelines on Restrictive Covenants & Trade Secrets*

2.3(b)(i) *State Restrictive Covenant Law*

Under Michigan law, an employer may obtain an employment agreement that protects the employer's reasonable competitive business interests and expressly prohibits the employee from engaging in employment or in a line of business after termination of employment, provided the agreement is reasonable as to its duration, geographical area, and the type of employment or line of business.[94]

The standard for reasonableness of geographic limitations is whether the limitations are no greater than reasonably necessary to protect the employer's legitimate business interest.[95] The scope of activities must be limited to those actually performed by the employee.[96] One Michigan appellate court held that even when an employee was terminated, the employee was bound to the noncompete agreement and could not work for a competitor.[97]

Enforceability Following Employee Discharge. In Michigan, it is unclear whether noncompete agreements will remain enforceable following an employee's termination. Michigan courts have found noncompetes permissible under these circumstances, depending upon the particular terms of the agreement.[98]

2.3(b)(ii) *Consideration for a Noncompete*

Restrictive covenants require an employee to promise not to do something the employee would otherwise have been able to do. For example, by signing a noncompete agreement, an employee is giving up the right to open a competing business or work for an employer in a competing business. Therefore, employers need to provide an employee with "consideration" in return for the agreement to be binding. Providing *consideration* means giving something of value—*i.e.*, a promise to do something that the employer was not otherwise obligated to do—such as extending an offer of employment to a new employee or providing a bonus for an existing employee.

In Michigan, noncompete agreements signed at the inception of employment have the requisite consideration required.[99] The law is well-established that an employee's continued employment by a

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[93] 18 U.S.C. §§ 1832 *et seq.*

[94] MICH. COMP. LAWS § 445.774a; *Mapal, Inc. v. Atarsia*, 147 F. Supp. 3d 670 (E.D. Mich. 2015).

[95] *Kelly Servs, Inc. v. Marzullo*, 591 F. Supp. 2d 924 (E.D. Mich. 2008); *St. Clair Med., P.C. v. Borgiel*, 715 N.W.2d 914, 920 (Mich. Ct. App. 2006).

[96] 715 N.W.2d at 920.

[97] *Coates v. Bastian Bros., Inc.*, 741 N.W.2d 539, 551 (Mich. Ct. App. 2007).

[98] *See, e.g.*, *Leach v. Ford Motor Co.*, 299 F. Supp. 2d 763 (E.D. Mich. 2004); *Coates v. Bastian Bros., Inc.*, 741 N.W.2d 539 (Mich. Ct. App. 2007).

[99] *Lowry Computer Prods., Inc. v. Head*, 984 F. Supp. 1111 (E.D. Mich. 1997).

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successor employer after a corporate buy-out is sufficient consideration for a noncompete agreement.[100] Continued employment is also sufficient consideration if employment is at will.[101]

2.3(b)(iii) *Ability to Modify or Blue Pencil a Noncompete*

When a restrictive covenant is found to be unreasonable in scope, some states refuse to enforce its terms entirely (sometimes referred to as the "all-or-nothing" rule), while others may permit the court to "blue pencil" or modify an agreement that is unenforceable as written. *Blue penciling* refers to the practice whereby a court strikes portions of a restrictive covenant it deems unenforceable. *Reformation*, on the other hand, refers to a court modifying a restrictive covenant to make it enforceable, which may include introducing new terms into the agreement (sometimes referred to as the "reasonableness" rule). By rewriting an overly broad restrictive covenant rather than simply deeming it unenforceable, courts attempt to effectuate the parties' intentions as demonstrated by their agreement to enter into a restrictive covenant in the first place.

Michigan law commands that courts narrowly construe restrictive covenants.[102] If a covenant is found to be overbroad, the Michigan court may limit the agreement and enforce the covenant to a reasonable extent.[103]

2.3(b)(iv) *State Trade Secret Law*

Even without a written contract, an employer may protect a trade secret and prohibit the former employee from disclosing or using it, based on the employee's common-law duty not to do so. When an employee leaves a business, the employee will sometimes take valuable information of the business to use for competitive purposes. In addition to noncompetition agreements, Michigan law provides other means for employers to protect themselves from a recently departed employee's misuse of proprietary information acquired from the employer. Michigan has adopted the Uniform Trade Secrets Act to protect this information.[104]

Definition of a Trade Secret. Under the Michigan Uniform Trade Secrets Act (MUTSA), a *trade secret* is defined as a complication of information, including a formula, pattern, compilation, program, device, method, technique, or process that:

1. derives independent economic value, present or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and
2. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.[105]

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[100] *Valley Nat'l Gas, Inc. v. Marihugh*, 2007 WL 2852338 (E.D. Mich. Oct. 1, 2007); *Vosburgh v. BFS Retail* (E.D. Mich. Apr. 11, 2007); *Qis, Inc. v. Indus. Qual. Control, Inc.*, 686 N.W.2d 788 (Mich. Ct. App. 2004).

[101] *QIS, Inc. v. Industrial Quality Control, Inc*., 686 N.W.2d 788 (Mich. 2004); *Robert Half v. Van Steenis,* 784 F. Supp. 1263 (E.D. Mich. 1991).

[102] *Whirlpool Corp. v. Burns*, 457 F. Supp. 2d 806 (W.D. Mich. 2006).

[103] MICH. COMP. LAWS § 445.774.

[104] MICH. COMP. LAWS. §§ 445.1901 *et seq*.

[105] MICH. COMP. LAWS § 445.1902(d).

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In Michigan, a trade secret cannot exist where the "secret" is readily ascertainable in the public domain.[106] However, objects that contain a combination of secret and nonsecret information have been considered trade secrets, for purposes of the MUTSA.[107]

Under Michigan law customer lists are only considered trade secrets unless the employee is bound by a confidentiality agreement.[108]

Misappropriation of a Trade Secret. Under the MUTSA, liability attaches if the trade secret is misappropriated. *Misappropriation* is defined as:

1. acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or
2. disclosure or use of a trade secret of another without express or implied consent by a person who:
   a. used improper means to acquire knowledge of the trade secret; or
   b. at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:
      i. derived from or through a person who had utilized improper means to acquire it;
      ii. acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or
      iii. derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or
   c. before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.[109]

To succeed on a claim for misappropriation of a trade secret under the MUTSA, a plaintiff must prove: (1) the existence of a trade secret; (2) its acquisition in confidence; and (3) the defendant's unauthorized use of it.[110]

Actual or threatened misappropriation may be enjoined.[111] Further, a complainant may be entitled to damages including actual loss and the unjust enrichment caused by the misappropriation.[112]

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[106] *Giasson Aerospace Sci., Inc. v. RCO Eng'g, Inc.*, 680 F. Supp. 2d 830 (E.D. Mich. 2010).

[107] *Mike's Train House, Inc. v. Lionel*, *L.L.C.*, 472 F.3d 398 (Mich. 2006) (model train drawings considered trade secrets even though they contained a mixture of secret and nonsecret information).

[108] *Nedschroef Detroit Corp. v. Bemas Enters, L.L.C.*, 106 F. Supp. 3d 874 (E.D. Mich. 2015), *aff'd* 646 Fed. App'x 481 (6th Cir. 2016).

[109] MICH. COMP. LAWS § 445.1902(b).

[110] *Nedschroef Detroit Corp*, 106 F. Supp. 3d 874.

[111] MICH. COMP. LAWS § 445.1903.

[112] MICH. COMP. LAWS § 445.1904.

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The MUTSA expressly preempts contract-based claims for breach of fiduciary duty and the duty of loyalty.[113]

2.3(b)(v) *State Guidelines on Employee Inventions & Ideas*

Michigan has no statutory guidelines addressing the ownership of employee inventions and ideas.

3. DURING EMPLOYMENT

3.1 Posting, Notice & Record-Keeping Requirements

3.1(a) *Posting & Notification Requirements*

3.1(a)(i) *Federal Guidelines on Posting & Notification Requirements*

Several federal employment laws require that specific information be posted in the workplace. Posting requirements vary depending upon the law at issue. For example, employers with fewer than 50 employees are not covered by the Family and Medical Leave Act and, therefore, would not be subject to the law's posting requirements. Table 5 details the federal workplace posting and notice requirements.

Table 5. Federal Posting & Notice Requirements

Poster or Notice	Notes
Employee Polygraph Protection Act (EPPA)	Employers must post and keep posted on their premises a notice explaining the EPPA.[114]
Equal Employment Opportunity (EEO) Act ("EEO is the Law" Poster)	Employers must post and keep posted in conspicuous places upon their premises, in an accessible format, a notice that describes the federal laws prohibiting discrimination in employment.[115]
Fair Labor Standards Act (FLSA)	Employers must post and keep posted a notice, summarizing employee rights under the FLSA, in conspicuous places in every establishment where employees subject to the FLSA are employed.[116]
Family & Medical Leave Act (FMLA)	Employers must conspicuously post, where employees are employed, a notice explaining the FMLA's provisions and providing information on filing complaints of violations.[117]

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[113] *Rockwell Med., Inc. v. Yocum*, 76 F. Supp. 3d 826 (E.D. Mich. 2014), *aff'd* 630 F. App'x 499 (6th Cir. 2015).

[114] 29 C.F.R. § 801.6. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/eppa.htm.

[115] 29 C.F.R. §§ 1601.30 (Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act), 1627.10 (Age Discrimination in Employment Act). This poster is available in English, Spanish, Arabic, and Chinese at https://www1.eeoc.gov/employers/poster.cfm.

[116] 29 C.F.R. § 516.4. This poster is available in English, Spanish, Chinese, Russian, Thai, Hmong, Vietnamese, Korean, Polish, and Haitian Creole at http://www.dol.gov/whd/regs/compliance/posters/flsa.htm.

[117] 29 C.F.R. § 825.300. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/fmla.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Migrant and Seasonal Agricultural Worker Protection Act (MSPA)	Farm labor contractors, agricultural employers, and agricultural associations that employ or house any migrant or seasonal agricultural worker must conspicuously post at the place of employment a poster setting forth the MSPA's rights and protections, including the right to request a written statement of the information described in 29 U.S.C. § 1821(a). The poster must be provided in Spanish or other language common to migrant or seasonal agricultural workers who are not fluent or literate in English.[118]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates must at all times display and make available to employees a poster explaining the conditions under which the special wage rate applies. Where an employer finds it inappropriate to post notice, directly providing the poster to its employees is sufficient.[119]
Occupational Safety and Health Act ("the Fed-OSH Act")	Employers must post a notice or notices informing employees of the Fed-OSH Act's protections and obligations, and that for assistance and information employees should contact the employer or nearest U.S. Department of Labor office.[120]
Uniformed Service Employment and Reemployment Rights Act (USERRA)	Employers must provide notice about USERRA's rights, benefits, and obligations to all individuals entitled to such rights and benefits. Employers may provide notice by posting or by other means, such as by distributing or mailing the notice.[121]
In addition to the federal posters required for all employers, government contractors may be required to post the following posters.	
"EEO is the Law" Poster with the EEO is the Law Supplement	Employers subject to Executive Order No. 11246 must prominently post notice, where it can be readily seen by employees and applicants, explaining that discrimination in employment is prohibited on numerous grounds.[122] The second page includes reference to government contractors.

[118] 29 C.F.R. §§ 500.75, 500.76. This poster is available in English, Spanish, Haitian Creole, Vietnamese, and Hmong at http://www.dol.gov/whd/regs/compliance/posters/mspaensp.htm.

[119] 29 C.F.R. § 525.14. This poster is available in English and Spanish at http://www.dol.gov/whd/regs/compliance/posters/disab.htm.

[120] 29 C.F.R § 1903.2. This poster is available in English, Spanish, Arabic, Chinese, Russian, Nepali, Thai, Hmong, Vietnamese, Korean, Polish, Portuguese, and Haitian Creole at https://www.osha.gov/Publications/poster.html.

[121] 20 C.F.R. app. § 1002. This poster is available at http://www.dol.gov/vets/programs/userra/poster.htm.

[122] 41 C.F.R. § 60-1.42; *see also* 41 C.F.R. § 60-741.5(a) (requiring all agencies and contractors to include an equal opportunity clause in contracts, in which the contractor agrees to post this notice). This poster is available at https://www.dol.gov/ofccp/regs/compliance/posters/ofccpost.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Annual EEO, Affirmative Action Statement	Government contractors covered by the Affirmative Action Program (AAP) requirements are required to post a separate EEO/AA Policy Statement (in addition to the required "EEO is the Law" Poster), which indicates the support of the employer's top U.S. official. This statement should be reaffirmed annually with the employer's AAP.[123]
Employee Rights Under the Davis-Bacon Act Poster	Employers performing work covered by the labor standards of the Davis-Bacon and Related Acts must prominently post notice, where accessible to employees, summarizing the protections of the law.[124]
Employee Rights Under the Service Contract or Walsh-Healey Public Contracts Acts Poster	Employers performing work covered by the McNamara-O'Hara Service Contract Act ("Service Contract Act") or the Walsh-Healey Public Contracts Act ("Walsh-Healey Act") must prominently post notice, where accessible to employees, summarizing all required compensation and other entitlements. To comply, employers may notify employees by attaching a notice to the contract, or may post the notice at the worksite.[125]
E-Verify Participation & Right to Work Posters	The Department of Homeland Security requires certain government contractors, under Executive Order Nos. 12989, 13286, and 13465, to post notice informing current and prospective employees of their rights and protections. Notices must be posted in a prominent place that is visible to prospective employees and all employees who are verified through the system.[126]
Notice to Workers with Disabilities/Special Minimum Wage Poster	Employers of workers with disabilities under special minimum wage certificates authorized by the Service Contract Act or the Walsh-Healey Public Contracts Act must post notice, explaining the conditions under which the special minimum wages may be paid. Where an employer finds it inappropriate to post this notice, directly providing the poster to its employees is sufficient.[127]

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[123] 41 C.F.R. §§ 60-300.44, 60-741.44.

[124] 29 C.F.R. § 5.5(a)(l)(i). This poster is available at https://www.dol.gov/whd/regs/compliance/posters/davis.htm.

[125] 29 C.F.R. § 4.6(e); 29 C.F.R. § 4.184. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/sca.htm.

[126] U.S. Citizenship and Immigration Servs., Dep't of Homeland Sec., *E-Verify Memorandum of Understanding for Employers*, *available at* https://www.e-verify.gov/sites/default/files/everify/memos/MOUforEVerifyEmployer.pdf. The poster is available at https://preview.e-verify.gov/sites/default/files/everify/posters/IER_RightToWorkPoster%20Eng_Es.pdf. According to the U.S. Citizenship and Immigration Services, this poster must be displayed in English and Spanish.

[127] 29 C.F.R. § 525.14. This poster is available at https://www.dol.gov/whd/regs/compliance/posters/disab.htm.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
Notification of Employee Rights Under Federal Labor Laws	Government contractors are required under Executive Order No. 13496 to post this notice in conspicuous locations and, if the employer posts notices to employees electronically, it must also make this poster available where it customarily places other electronic notices to employees about their jobs. Electronic posting cannot be used as a substitute for physical posting. Where a significant portion of the workforce is not proficient in English, the notice must be provided in the languages spoken by employees.[128]
Office of the Inspector General's Fraud Hotline Poster	Certain government contractors must prominently post notice, where accessible to employees, addressing fraud and how to report such misconduct.[129]
Paid Sick Leave Under Executive Order No. 13706	Certain government contractors must prominently post notice, where accessible to employees at the worksite, informing employees of their right to earn and use paid sick leave. Notice may be provided electronically if customary to the employer.[130] **Pay Period or Monthly Notice.** A contractor must inform an employee in writing of the amount of accrued paid sick leave no less than once each pay period or each month, whichever is shorter. Additionally, this information must be provided when employment ends and when an employee's accrued but unused paid sick leave is reinstated. Providing these notifications via a pay stub meets the compliance requirements of the executive order. **Pay Stub / Electronic.** A contractor's existing procedure for informing employees of available leave, such as notification accompanying each paycheck or an online system an employee can check at any time, may be used to satisfy or partially satisfy these requirements if it is written (including electronically, if the contractor customarily corresponds with or makes information available to its employees by electronic means).[131]
Pay Transparency Nondiscrimination Provision	Employers covered by Executive Order No. 11246 must either post a copy of this nondiscrimination provision in conspicuous places available to employees and applicants for employment, or post the provision

[128] 29 C.F.R. § 471.2. This poster is available at https://www.dol.gov/olms/regs/compliance/EO13496.htm.

[129] 48 C.F.R. §§ 3.1000 *et seq*. This poster is available at https://oig.hhs.gov/documents/root/243/OIG_Hotline_Ops_Poster_-_Grant__Contract_Fraud.pdf.

[130] 29 C.F.R. § 13.26. This poster is available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm. Additional resources on the sick leave requirement are available at https://www.dol.gov/whd/govcontracts/eo13706/index.htm.

[131] 29 C.F.R. § 13.5.

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Table 5. Federal Posting & Notice Requirements	
Poster or Notice	**Notes**
	electronically. Additionally, employers must distribute the nondiscrimination provision to their employees by incorporating it into their existing handbooks or manuals.[132]
Worker Rights Under Executive Order Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	Employers that contract with the federal government under Executive Order Nos. 13658 or 14026 must prominently post notice, where accessible to employees, summarizing the applicable minimum wage rate and other required information.[133]

3.1(a)(ii) *State Guidelines on Posting & Notification Requirements*

Table 6 details the state workplace posting and notice requirements. Additional requirements may apply for state contractors. While local ordinances are generally excluded from this publication, some local ordinances may have posting requirements, especially in the minimum wage or paid leave areas. Local posting requirements may be discussed in the table below or in later sections, but the local ordinance coverage is not comprehensive.

Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Benefits & Leave: Paid Medical Leave	Employers must display a poster in a conspicuous place that is accessible to employees summarizing certain rights under the Michigan Paid Medical Leave Act. The poster is available in English, Spanish, and Arabic.[134]

[132] 41 C.F.R. § 60-1.35(c). This poster is available at https://www.dol.gov/agencies/ofccp/posters.

[133] 29 C.F.R. §§ 10.29, 23.290. The poster, referencing both Executive Orders, is available at https://www.dol.gov/whd/regs/compliance/posters/mw-contractors.htm.

[134] Michigan Paid Medical Leave Act, Mich. Comp. Laws § 408.968. This poster is available at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/WHD-99xx-Information-Sheets/WHD-9911-PMLA-Poster/Paid_Medical_Leave_Act_Poster_9911_English.pdf?rev=764ee47c1ed442bd9ac1d904eb042ea7&hash=31AC205C4341736BEF941A0FCF09DF51. On January 26, 2023, a state appellate court reversed a July 2022 decision by a state judge held that the law concerning the minimum wage and tipped employees as summarized below was void and that a prior version of the law that existed before the legislature significantly overhauled was the law. The appellate court decision means that the law as summarized below remains *the* law. The losing side has appealed the decision to the state supreme court, which, on June 20, 2023, agreed to hear the case. When more information exists, an update to the following summaries will occur.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
Child Labor	Employers that employ minors must conspicuously post notice summarizing the state's restrictions on child labor.[135]
Fair Employment Practices	All employers may be required to post notice informing applicants and employees of the prohibition against discrimination in employment. Posting may be required as a penalty for violation of the civil rights law.[136]
Unemployment Compensation	All employers must post and maintain notice informing employees that their employer is covered by the unemployment insurance act and instruction them how to file claims.[137]
Wages, Hours & Payroll	Employers with two or more employees (at any one time within a calendar year) must post conspicuous notice, in an accessible location, informing employees about the minimum wage laws, including overtime and equal pay.[138]
Whistleblowers Protection Act Poster	All employers must post notice informing employees about their duties and rights under the state's whistleblower protection law.[139]
Workplace Safety: Annual Summary of Injuries & Illnesses	All employers must centrally and conspicuously post and maintain the annual summary of workplace illnesses and injuries, per the Michigan

[135] MICH. COMP. LAWS § 409.113; MICH. ADMIN. CODE r. 408.6309. This poster is available at https://www.michigan.gov/documents/leo/whd_9919_yesa_Posting_Requirements_674651_7.pdf.

[136] MICH. COMP. LAWS §§ 37.2605, 37.1210; MICH. ADMIN. CODE r. 37.101. This poster is available at http://www.michigan.gov/documents/mdcr/Discrimination_poster_2017_2_554046_7.pdf.

[137] MICH. ADMIN. CODE r. 421.105. Poster UIA 1710 is available at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/UIA/Employer-Forms/UIA-1710-Notice-to-All-Employees-Poster.pdf?rev=64350b409902441fad42d6f043deb684.

[138] MICH. COMP. LAWS § 408.417. This poster is available in English at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/WHD-99xx-Information-Sheets/WHD-9904-MW-optional-posting/WHD-9904-Minimum_Wage_Poster.pdf?rev=0539fb239e2d4f4f91ac606cf00f1e66&hash=0AC80DB868C310BDC0B70D0B56F39767, in Spanish at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/WHD-99xx-Information-Sheets/WHD-9904-MW-optional-posting/whd9904_MW_posting_Required_single_page_Spanish.pdf?rev=127c10faf6bb4013ae4a4ba87b6745d0&hash=14B63C35D9CF5114D4AFC7F591ACC19E, and in Arabic at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/WAGE-HOUR/WHD-99xx-Information-Sheets/WHD-9904-MW-optional-posting/whd9904_MW_posting_Required_Arabic.pdf?rev=827d99d8bee041438b6a05f03f1feff8&hash=8CF9444DDCA2C31618ABDB9810C218E3.

[139] MICH. COMP. LAWS § 15.368. This poster is available at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Publications/Workplace-Posters/Whistleblowers.pdf?rev=c3bd85bfe022444082f648d9c683afcf&hash=547B43DE250517B7E951DA1277CD6918.

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Table 6. State Posting & Notice Requirements	
Poster or Notice	**Notes**
	Occupational Safety and Health Administration (MIOSHA), using the MIOSHA Log 300 Forms.[140]
Workplace Safety: Material Safety Data Sheet (MSDS) Location	Each time a new or revised MSDS is displayed, employers subject to the federal hazardous communication standard must centrally and conspicuously post notice informing employees where they can find all pertinent MSDS. Notice of the MSDS location must be posted within five days of the revision and stay up for 10 working days.[141]
Workplace Safety: No Smoking Signs	Smoking is prohibited in enclosed places of employment in Michigan.[142] "No smoking" signs must be clearly and conspicuously posted at entrances and in any area where smoking is prohibited.[143]
Workplace Safety: Safety & Health Protection on the Job	Employers subject to the federal hazardous communication standard must centrally and conspicuously post notice informing employees about the Michigan Occupational Safety and Health Act, employer duties, and how to file complaints.[144]

3.1(b) *Record-Keeping Requirements*

3.1(b)(i) *Federal Guidelines on Record Keeping*

Table 7 summarizes the federal record-keeping requirements.

[140] MICH. COMP. LAWS §§ 408:1011, 408.1067. MIOSHA posters and information are available at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Publications/Workplace-Posters/CET-2010-English-8-x-11--09-20.pdf?rev=fed3cdb0364242a6a1f6e67ca7491ba3&hash=6C39E71C9DD0E8148C221853B93E12E0.

[141] MICH. COMP. LAWS §§ 408:1014k, 408.1067; *see also* 29 C.F.R. § 1910.1200. This poster is available at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Publications/Workplace-Posters/CET-2105_RTK-Poster.pdf?rev=3ff284c2bb2048c687f80f40ce89c6b8&hash=AD347DABBDC43259BF4682400B1A936F.

[142] MICH. COMP. LAWS §§ 333.12601 *et seq*.

[143] MICH. COMP. LAWS § 333.12603. Employers must identify their own forms for this posting requirement.

[144] MICH. COMP. LAWS §§ 408.1014j, 408.1067. This poster is available in English at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Publications/Workplace-Posters/CET-2010-English-8-x-11--09-20.pdf?rev=fed3cdb0364242a6a1f6e67ca7491ba3&hash=6C39E71C9DD0E8148C221853B93E12E0 and in Spanish at https://www.michigan.gov/leo/-/media/Project/Websites/leo/Documents/MIOSHA/Publications/Workplace-Posters/CET-2010s-Spanish-8-x-11-06-21.pdf?rev=e76f25e09d6e449a9f6d5fcf1982666b&hash=738C6554D235EF70DB23086A486C4701.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Age Discrimination in Employment Act (ADEA): Payroll Records	*Covered employers must maintain the following payroll or other records for each employee:* • employee's name, address, and date of birth; • occupation; • rate of pay; and • compensation earned each week.[145]	At least 3 years from the date of entry.
Age Discrimination in Employment Act (ADEA): Personnel Records	*Employers that maintain the following personnel records in the course of business are required by the ADEA to keep them for the specified period of time:* • job applications, resumes, or other forms of employment inquiry, including records pertaining to the refusal to hire any individual; • promotion, demotion, transfer, selection for training, recall, or discharge of any employee; • job orders submitted by the employer to an employment agency or labor organization for recruitment of personnel for job openings; • test papers completed by applicants which disclose the results of any employment test considered by the employer; • results of any physical examination considered by the employer in connection with a personnel action; and • any advertisements or notices relating to job openings, promotions, training programs, or opportunities to work overtime.[146]	At least 1 year from the date of the personnel action to which any records relate.
Age Discrimination in Employment (ADEA): Benefit Plan Documents	*Employer must keep on file any:* • employee benefit plans, such as pension and insurance plans; and • copies of any seniority systems and merit systems in writing.[147]	For the full period the plan or system is in effect, and for at least 1 year after its termination.
Title VII & the Americans with Disabilities Act	*Employers must preserve any personnel or employment record made, including:* • requests for reasonable accommodation; • application forms submitted by applicants;	At least 1 year from the date the records were made, or

[145] 29 U.S.C. § 626; 29 C.F.R. § 1627.3(a).

[146] 29 C.F.R. § 1627.3(b).

[147] 29 C.F.R. § 1627.3(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
(ADA): Personnel Records	• other records having to do with hiring, promotion, demotion, transfer, lay-off, or termination; • rates of pay or other terms of compensation; and • selection for training or apprenticeship.[148]	from the date of the personnel action involved, whichever is later.
Title VII & the Americans with Disabilities Act (ADA): Complaints of Discrimination	*When a charge of discrimination has been filed or an action brought against the employer, it must:* • make and keep such records relevant to the determination of whether unlawful employment practices have been or are being committed, including personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • retain application forms or test papers completed by unsuccessful applicants or candidates for the position.[149]	Until final disposition of the charge or action (*i.e.*, until the statutory period for bringing an action has expired or, if an action has been brought, the date the litigation is terminated).
Title VII & the Americans with Disabilities Act (ADA): Other	An employer must keep and maintain its Employer Information Report (EEO-1).[150]	Most recent form must be retained for 1 year.
Employee Polygraph Protection Act (EPPA)	*Records pertaining to a polygraph test must be maintained for the specified time period including, but not limited to, the following:* • a copy of the statement given to the examinee regarding the time and place of the examination and the examinee's right to consult with an attorney; • the notice to the examiner identifying the person to be examined; • copies of opinions, reports, or other records given to the employer by the examiner; • where the test is conducted in connection with an ongoing investigation involving economic loss or injury, a statement setting forth the specific incident or activity	At least 3 years following the date on which the polygraph examination was conducted.

[148] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[149] 42 U.S.C. § 2000e-8c; 29 C.F.R. § 1602.14.

[150] 29 C.F.R. § 1602.7.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	under investigation and the basis for testing the particular employee; and • where the test is conducted in connection with an ongoing investigation of criminal or other misconduct involving loss or injury to the manufacture, distribution, or dispensing of a controlled substance, records specifically identifying the loss or injury in question and the nature of the employee's access to the person or property that is the subject of the investigation.[151]	
Employee Retirement Income Security Act (ERISA)	Employers that sponsor an ERISA-qualified plan must maintain records that provide in sufficient detail the information from which any plan description, report, or certified information filed under ERISA can be verified, explained, or checked for accuracy and completeness. This includes vouchers, worksheets, receipts, and applicable resolutions.[152]	At least 6 years after documents are filed or would have been filed but for an exemption.
Equal Pay Act	Covered employers must maintain the records required to be kept by employers under the Fair Labor Standards Act (29 C.F.R. part 516).[153]	3 years.
Equal Pay Act: Other	*Covered employers must maintain any additional records made in the regular course of business relating to:* • payment of wages; • wage rates; • job evaluations; • job descriptions; • merit and seniority systems; • collective bargaining agreements; and • other matters which describe any pay differentials between the sexes.[154]	At least 2 years.
Fair Labor Standards Act (FLSA): Payroll Records	*Employers must maintain the following records with respect to each employee subject to the minimum wage and/or overtime provisions of the FLSA:* • full name and any identifying symbol used in place of name on time or payroll records;	3 years from the last day of entry.

[151] 29 U.S.C. §§ 2001 *et seq.*; 29 C.F.R. § 801.30.

[152] 29 U.S.C. § 1027.

[153] 29 C.F.R. § 1620.32(a).

[154] 29 C.F.R. § 1620.32(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• home address with zip code; • date of birth, if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • regular hourly rate of pay for any workweek in which overtime compensation is due; • basis on which wages are paid (pay interval); • amount and nature of each payment excluded from the employee's regular rate; • hours worked each workday and total hours worked each workweek; • total daily or weekly straight-time earnings or wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation; • total premium pay for overtime hours; • total additions to or deductions from wages paid each pay period, including employee purchase orders or wage assignments; • total wages paid each pay period; • date of payment and the pay period covered by the payment; • records of retroactive payment of wages, including the amount of such payment to each employee, the period covered by the payment, and the date of the payment; and • for employees working on a fixed schedule, the schedule of daily and weekly hours the employee normally works (instead of hours worked each day and each workweek).[155] The record should also indicate for each week whether the employee adhered to the schedule and, if not, show the exact number of hours worked each day each week.	
Fair Labor Standards Act (FLSA): Tipped Employees	*Employers must maintain and preserve all Payroll Records noted above as well as:* • a symbol, letter, or other notation on the pay records identifying each employee whose wage is determined in part by tips;	

155 29 C.F.R. §§ 516.2, 516.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• weekly or monthly amounts reported by the employee to the employer of tips received (*e.g.*, information reported on Internal Revenue Service Form 4070); • amount by which the wages of each tipped employee have been deemed to be increased by tips as determined by the employer (not in excess of the difference between $2.13 and the applicable federal minimum wage); • hours worked each workday in which an employee does not receive tips, and total daily or weekly straight-time payment made by the employer for such hours; and • hours worked each workday in occupations in which the employee receives tips, and total daily or weekly straight-time earnings for such hours.[156]	
Fair Labor Standards Act (FLSA): White Collar Exemptions	*For bona fide executive, administrative, and professional employees and outside sales employees (e.g., white collar employees) the following information must be maintained:* • full name and any identifying symbol used in place of name on time or payroll records; • home address with zip code; • date of birth if under 19; • sex and occupation in which employed; • time of day and day of week on which the employee's workweek begins; • total wages paid each pay period; • date of payment and the pay period covered by the payment; and • basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.[157]	3 years from the last day of entry.
Fair Labor Standards Act (FLSA): Agreements & Other Records	*In addition to payroll information, employers must preserve agreements and other records, including:* • collective bargaining agreements and any amendments or additions; • individual employment contracts or, if not in writing, written memorandum summarizing the terms;	At least 3 years from the last effective date.

[156] 29 C.F.R. § 516.28.

[157] 29 C.F.R. §§ 516.2, 516.3. Presumably the regulation's reference to "prerequisites" is an error and should refer to "perquisites."

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• written agreements or memoranda summarizing special compensation arrangements under FLSA sections 7(f) or 7(j); • certain plans and trusts under FLSA section 7(e); • certificates and notices listed or named in the FLSA; and • sales and purchase records.[158]	
Fair Labor Standards Act (FLSA): Other Records	*In addition to other FLSA requirements, employers must preserve supplemental records, including:* • basic time and earning cards or sheets; • wage rate tables; • order, shipping, and billing records; and • records of additions to or deductions from wages.[159]	At least 2 years from the date of last entry.
Family and Medical Leave Act (FMLA)	*Covered employers must make, keep, and maintain records pertaining to their compliance with the FMLA, including:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours per pay period; • additions to or deductions from wages and total compensation paid; • dates FMLA leave is taken by FMLA-eligible employees (leave must be designated in records as FMLA leave, and leave so designated may not include leave required under state law or an employer plan not covered by FMLA); • if FMLA leave is taken in increments of less than one full day, the hours of the leave; • copies of employee notices of leave furnished to the employer under the FMLA, if in writing; • copies of all general and specific notices given to employees in accordance with the FMLA; • any documents that describe employee benefits or employer policies and practices regarding the taking of paid and unpaid leave; • premium payments of employee benefits; and • records of any dispute between the employer and an employee regarding designation of leave as FMLA leave, including any written statement from the employer or	At least 3 years.

[158] 29 C.F.R. § 516.5.

[159] 29 C.F.R. § 516.6.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employee of the reasons for the designation and the disagreement. *Covered employers with no eligible employees must only maintain the following records:* • basic payroll and identifying employee data, including name, address, and occupation; • rate or basis of pay and terms of compensation; • daily and weekly hours worked per pay period; • additions to or deductions from wages; and • total compensation paid. *Covered employers in a joint employment situation must keep all the records required in the first series with respect to any primary employees, and must keep the records required by the second series with respect to any secondary employees.* *Also, if an FMLA-eligible employee is not subject to the FLSA record-keeping requirements for minimum wage and overtime purposes (i.e., not covered by, or exempt from FLSA) an employer does not need to keep a record of actual hours worked, provided that:* • FMLA eligibility is presumed for any employee employed at least 12 months; and • with respect to employees who take FMLA leave intermittently or on a reduced leave schedule, the employer and employee agree on the employee's normal schedule or average hours worked each week and reduce their agreement to a written, maintained record. *Medical records also must be retained.* Specifically, records and documents relating to certifications, re-certifications, or medical histories of employees or employees' family members, created for purposes of FMLA, must be maintained as confidential medical records in separate files/records from the usual personnel files. If the ADA is also applicable, such records must be maintained in conformance with ADA-confidentially requirements (subject to exceptions). If the Genetic Information Nondiscrimination Act of 2008 (GINA) is applicable, records and documents created for purposes of FMLA containing family medical history or genetic information as defined in	

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	GINA must be maintained in accordance with the confidentiality requirements of Title II of GINA.[160]	
Federal Insurance Contributions Act (FICA)	*Employers must keep FICA records, including:* • copies of any return, schedule, or other document relating to the tax; • records of all remuneration (cash or otherwise) paid to employees for employment services. The records must show with respect to each employee receiving such remuneration: ▪ name, address, and account number of the employee and additional information when the employee does not provide a Social Security card; ▪ total amount and date of each payment of remuneration (including any sum withheld as tax or for any other reason) and the period of services covered by such payment; ▪ amount of each such remuneration payment that constitutes wages subject to tax; ▪ amount of employee tax, or any amount equivalent to employee tax, collected with respect to such payment, and, if collected at a time other than the time such payment was made, the date collected; and ▪ if the total remuneration payment and the amount thereof which is taxable are not equal, the reason for this; • the details of each adjustment or settlement of taxes under FICA; and • records of all remuneration in the form of tips received by employees, employee statements of tips under section 6053(a) (unless otherwise maintained), and copies of employer statements furnished to employees under section 6053(b).[161]	At least 4 years after the date the tax is due or paid, whichever is later.
Immigration	Employers must retain all completed Form I-9s.[162]	3 years after the date of hire or 1 year following the termination

[160] 29 U.S.C. § 2616; 29 C.F.R. § 825.500.

[161] 26 C.F.R. §§ 31.6001-1, 31.6001-2.

[162] 8 C.F.R. § 274a.2.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		of employment, whichever is later.
Income Tax: Accounting Records	*Any taxpayer required to file an income tax return must maintain accounting records that will enable the filing of tax returns correctly stating taxable income each year, including:* • regular books of account or records, including inventories, sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.[163]	Required to be maintained for "so long as the contents [of the records] may become material in the administration of any internal revenue law;" this could be as long as 15 years in some cases.
Income Tax: Employee Payment Records	*Employers are required to maintain records reflecting all remuneration paid to each employee, including:* • employee's name, address, and account number; • total amount and date of each payment; • the period of services covered by the payment; • the amount of remuneration that constitutes wages subject to withholding; • the amount of tax collected and, if collected at a time other than the time the payment was made, the date collected; • an explanation for any discrepancy between total remuneration and taxable income; • the fair market value and date of each payment of noncash remuneration for services performed as a retail commissioned salesperson; and • other supporting documents relating to each employee's individual tax status.[164]	4 years after the return is due or the tax is paid, whichever is later.
Income Tax: W-4 Forms	Employers must retain all completed Form W-4s.[165]	As long as it is in effect and at

[163] 26 U.S.C. § 3402; 26 C.F.R. § 1.6001-1.

[164] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

[165] 26 C.F.R. §§ 31.6001-1, 31.6001-5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
		least 4 years thereafter.
Unemployment Insurance	*Employers are required to maintain all relevant records under the Federal Unemployment Tax Act, including:* • total amount of remuneration paid to employees during the calendar year for services performed; • amount of such remuneration which constitutes wages subject to taxation; • amount of contributions paid into state unemployment funds, showing separately the payments made and not deducted from the remuneration of its employees, and payments made and deducted or to be deducted from employee remuneration; • information required to be shown on the tax return and the extent to which the employer is liable for the tax; • an explanation for any discrepancy between total remuneration paid and the amount subject to tax; and • the dates in each calendar quarter on which each employee performed services not in the course of the employer's trade or business, and the amount of the cash remuneration paid for those services.[166]	At least 4 years after the later of the date the tax is due or paid for the period covered by the return.
Workplace Safety / the Fed-OSH Act: Exposure Records	*Employers must preserve and retain employee exposure records, including:* • environmental monitoring or measuring of a toxic substance or harmful physical agent, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to an interpretation of the results obtained; • biological monitoring results which directly assess the absorption of a toxic substances or harmful physical agent by body specimens; and • Material Safety Data Sheets (MSDSs), or in the absence of these documents, a chemical inventory or other record reveling the identity of a toxic substances or harmful physical agent and where and when the substance or agent was used. *Exceptions to this requirement include:*	At least 30 years.

[166] 26 C.F.R. § 31.6001-4.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• background data to workplace monitoring need only be retained for 1 year provided that the sampling results, collection methodology, analytic methods used, and a summary of other background data is maintained for 30 years; • MSDSs need not be retained for any specified time so long as some record of the identity of the substance, where it was used and when it was used is retained for at least 30 years; and • biological monitoring results designated as exposure records by a specific Fed-OSH Act standard should be retained as required by the specific standard.[167]	
Workplace Safety / the Fed-OSH Act: Medical Records	*Employers must preserve and retain "employee medical records," including:* • medical and employment questionnaires or histories; • results of medical examinations and laboratory tests; • medical opinions, diagnoses, progress notes, and recommendations; • first aid records; • descriptions of treatments and prescriptions; and • employee medical complaints. *"Employee medical record" does not include:* • physical specimens; • records of health insurance claims maintained separately from employer's medical program; • records created solely in preparation for litigation that are privileged from discovery; • records concerning voluntary employee assistance programs, if maintained separately from the employer's medical program and its records; and • first aid records of one-time treatment which do not involve medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job, if made on-site by a nonphysician and maintained separately from the employer's medical program and its records.[168]	Duration of employment plus 30 years.
Workplace Safety: Analyses	*Employers must preserve and retain analyses using medical and exposure records*, including any compilation of data, or	At least 30 years.

[167] 29 C.F.R. § 1910.1020(d).

[168] 29 C.F.R. § 1910.1020(d).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Using Medical and Exposure Records	other study based on information collected from individual employee exposure or medical records, or information collected from health insurance claim records, provided that the analysis has been provided to the employer or no further work is being done on the analysis.[169]	
Workplace Safety: Injuries and Illnesses	*Employers must preserve and retain records of employee injuries and illnesses, including:* • OSHA 300 Log; • the privacy case list (if one exists); • the Annual Summary; • OSHA 301 Incident Report; and • old 200 and 101 Forms.[170]	5 years following the end of the calendar year that the record covers.
Additional record-keeping requirements apply to government contractors. The list below, while nonexhaustive, highlights some of these obligations.		
Affirmative Action Programs (AAP)	*Contractors required to develop written affirmative action programs must maintain:* • current AAP and documentation of good faith effort; and • AAP for the immediately preceding AAP year and documentation of good faith effort.[171]	Immediately preceding AAP year.
Equal Employment Opportunity: Personnel & Employment Records	*Government contractors covered by Executive Order No. 11246 and those required to provide affirmative action to persons with disabilities and/or disabled veterans and veterans of the Vietnam Era must retain the following records:* • records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship; • other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes; and • any and all expressions of interest through the internet or related electronic data technologies as to which the contractor considered the individual for a particular	3 years recommended; regulations state "not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later." If the contractor has fewer than 150 employees

169 29 C.F.R. § 1910.1020(d).

170 29 C.F.R. §§ 1904.33, 1904.44.

171 41 C.F.R. § 60-1.12(b).

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	position, such as on-line resumes or internal resume databases, records identifying job seekers contacted regarding their interest in a particular position, regardless of whether the individual qualifies as an internet applicant under 41 C.F.R. § 60–1.3, tests and test results, and interview notes; ▪ for purposes of record keeping with respect to internal resume databases, the contractor must maintain a record of each resume added to the database, a record of the date each resume was added, the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used and the date of the search; ▪ for purposes of record keeping with respect to external resume databases, the contractor must maintain a record of the position for which each search of the database was made, and corresponding to each search, the substantive search criteria used, the date of the search, and the resumes of job seekers who met the basic qualifications for the particular position who are considered by the contractor). *Additionally, for any record the contractor maintains pursuant to 41 C.F.R. § 60-1.12, it must be able to identify:* • gender, race, and ethnicity of each employee; and • where possible, the gender, race, and ethnicity of each applicant or internet applicant.[172]	or does not have a contract of at least $150,000, the minimum retention period is one year from the date of making the record or the personnel action, whichever occurs later.
Equal Employment Opportunity: Complaints of Discrimination	*Where a complaint of discrimination has been filed, an enforcement action commenced, or a compliance review initiated, employers must maintain:* • personnel or employment records relating to the aggrieved person and to all other employees holding positions similar to that held or sought by the aggrieved person; and • application forms or test papers completed by unsuccessful applicants and candidates for the same	Until final disposition of the complaint, compliance review or action.

[172] 41 C.F.R. §§ 60-1.12, 60-300.80, and 60-741.80.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	position as the aggrieved person applied and was rejected.[173]	
Minimum Wage Under Executive Orders Nos. 13658 (contracts entered into on or after January 1, 2015), 14026 (contracts entered into on or after January 30, 2022)	*Covered contractors and subcontractors performing work must maintain for each worker:* • name, address, and Social Security number; • occupation(s) or classification(s); • rate or rates of wages paid; • number of daily and weekly hours worked; • any deductions made; and • total wages paid. These records must be available for inspection and transcription by authorized representatives of the Wage and Hour Division (WHD) of the U.S. Department of Labor. The contractor must also permit authorized representatives of the WHD to conduct interviews with workers at the worksite during normal working hours.[174]	3 years.
Paid Sick Leave Under Executive Order No. 13706	*Contractors and subcontractors performing work subject to Executive Order No. 13706 must keep the following records:* • employee's name, address, and Social Security number; • employee's occupation(s) or classification(s); • rate(s) of wages paid (including all pay and benefits provided); • number of daily and weekly hours worked; • any deductions made; • total wages paid (including all pay and benefits provided) each pay period; • a copy of notifications to employees of the amount of accrued paid sick leave; • a copy of employees' requests to use paid sick leave (if in writing) or (if not in writing) any other records reflecting such employee requests; • dates and amounts of paid sick leave used by employees (unless a contractor's paid time off policy satisfies the EO's requirements, leave must be designated in records as paid sick leave pursuant to the EO);	During the course of the covered contract as well as after the end of the contract.

[173] 41 C.F.R. §§ 60-1.12, 60-741.80.

[174] 29 C.F.R. § 23.260.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• a copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests; • any records relating to the certification and documentation a contractor may require an employee to provide, including copies of any certification or documentation provided by an employee; • any other records showing any tracking of or calculations related to an employee's accrual and/or use of paid sick leave; • the relevant covered contract; • the regular pay and benefits provided to an employee for each use of paid sick leave; and • any financial payment made for unused paid sick leave upon a separation from employment intended to relieve a contractor from its reinstatement obligation.[175]	
Davis-Bacon Act	*Davis-Bacon Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents); • daily and weekly number of hours worked; and • deductions made and actual wages paid. *Contractors employing apprentices or trainees under approved programs must maintain written evidence of:* • registration of the apprenticeship programs; • certification of trainee programs; • the registration of the apprentices and trainees; • the ratios and wage rates prescribed in the program; and • worker or employee employed in conjunction with the project.[176]	At least 3 years after the work.

[175] 29 C.F.R. § 13.25.

[176] 29 C.F.R. § 5.5.

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Table 7. Federal Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Service Contract Act	*Service Contract Act contractors or subcontractors must maintain the following records with respect to each employee:* • name, address, and Social Security number; • work classification; • rates of wage; • fringe benefits; • total daily and weekly compensation; • the number of daily and weekly hours worked; • any deductions, rebates, or refunds from daily or weekly compensation; • list of wages and benefits for employees not included in the wage determination for the contract; • any list of the predecessor contractor's employees which was furnished to the contractor by regulation; and • a copy of the contract.[177]	At least 3 years from the completion of the work records containing the information.
Walsh-Healey Act	*Walsh-Healey Act supply contractors must keep the following records:* • wage and hour records for covered employees showing wage rate, amount paid in each pay period, hours worked each day and week; • the period in which each employee was engaged on a government contract and the contract number; • name, address, sex, and occupation; • date of birth of each employee under 19 years of age; and • a certificate of age for employees under 19 years of age.[178]	At least 3 years from the last date of entry.

3.1(b)(ii) *State Guidelines on Record Keeping*

Table 8 summarizes the state record-keeping requirements. Additional requirements may apply for state contractors.

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[177] 29 C.F.R. § 4.6.

[178] 41 C.F.R. § 50-201.501.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Income Tax	All employers must keep and maintain accurate records in a form such that the amount of tax due under the Income Tax Act can be determined.[179]	6 years.
Paid Medical Leave Act (voided July 31, 2024)	**NOTE: On July 31, 2024, the Michigan Supreme Court held that the Paid Medical Leave Act (PMLA) was VOID and REINSTATED the Earned Sick Time Act effective February 21, 2025. Until the state labor department, or the court, provides clarification concerning what happens to leave accumulated under the PMLA and what continuing rights, if any, employees have under the PMLA, the survey contains requirements for both laws.** Employers with 50 or more employees must maintain records documenting: • hours worked; and • paid medical leave taken by eligible employees.[180]	Not less than 1 year.
Earned Sick Time Act (reinstated effective February 21, 2025)	Employers with one or more employees must maintain records documenting: • hours worked; and • earned sick time taken.[181]	Not less than 3 years.
Unemployment Compensation	*Each employing unit must keep and maintain records, for each worker, including:* • name; • Social Security number; • beginning and ending dates of each pay period; • with respect to pay periods in which the worker performs services: hours spent performing covered services and hours spent performing excluded services; • total amount of remuneration for employment paid in any quarter; • total amount of wages, as defined in the Employment Security Act section 44(2), paid in any quarter; • dates of hire, rehire, or return to work after temporary layoff, and dates and reasons for any separations from work;	Not less than 6 years after the calendar year in which the remuneration was paid or, if not paid, due.

[179] MICH. COMP. LAWS §§ 206.408, 206.455.

[180] Michigan Paid Medical Leave Act § 10.

[181] MICH. COMP. LAWS § 408.970.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	• remuneration for services and dates of payment, showing separately cash remuneration (including special payments, such as bonuses and gifts) and the reasonable cash value of noncash remuneration determined pursuant to rules of the commission, including special payments, such as gifts; • amounts paid as allowances or reimbursements for business expenses and dates of payment; and • place of employment (e.g., city or township and county where the individual performs work). *Records should be maintained in such a way as to make it possible to ascertain the following with respect to any worker*: • earnings by calendar weeks; • weeks of less than full-time work; • time lost due to reasons other than lack of work; and • calendar days worked.[182]	
Wages, Hours & Payroll	*All employers must keep and maintain payroll records for each employee, including:* • employee name, home address, date of birth, and occupation or classification in which employed; • total basic rate of pay; • total hours worked each pay period; • separate itemization of all deductions made each pay period; • listing or itemization of fringe benefits; • total daily hours worked, showing the starting and ending times each day, computed to the nearest tenth of an hour, or other finer measure; • total hours worked each work period when the period does not coincide with the pay period; • total hourly, daily or weekly basic wage; • total wages paid each pay period; • itemization of all deductions made each pay period; • itemization of fringe benefits; • separate itemized statement of tips received if tip credit is taken. The statement shall be signed by the	Not less than 3 years.

[182] MICH. COMP. LAWS § 421.13; MICH. ADMIN. CODE r. 421.115.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
	employee and dated before the date the paycheck was received; • pieces produced by an employee paid on a piece-work basis; and • a record of compensatory time including a statement of compensatory time earned for the pay period, a statement of compensatory time paid in the pay periods and an employee's written request to receive compensatory time in lieu of wages.[183] Certain records are not required for *bona fide* executive, administrative, or professional employees. *In addition to the above requirements, employers granted a certificate to pay sub-minimum wages for employees with disabilities must retain*: • documentation substantiating each handicapped worker's disability; • total hours worked each pay period; • total wages paid each pay period; and • certification by Michigan rehabilitation services or the commission for the blind that the productive capacity of the worker is genuinely impaired and that the worker is to be paid a commensurate wage.[184]	
Workers' Compensation	*Employers subject to the workers' compensation law must keep records of all injuries arising in the course of employment causing death or disability, including:* • name, address, and age; • wages of the deceased or disabled employee; • time and cause of the accident; • nature and extent of the injury and disability; and • other information that the relevant agency may require.[185]	None specified.

[183] MICH. COMP. LAWS § 408.479; MICH. ADMIN. CODE r. 408.702.

[184] MICH. ADMIN. CODE r. 408.782(2).

[185] MICH. COMP. LAWS § 418.805.

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Table 8. State Record-Keeping Requirements		
Records	**Notes**	**Retention Requirement**
Workplace Safety: Hazardous Communications	Michigan has adopted the federal hazardous communication standard located at 29 C.F.R. § 19100.1200.[186]	See federal requirements.
Workplace Safety: Illnesses & Injuries	*Employers must maintain the following injury and illness reporting materials:* • MIOSHA 300 log; • privacy case list (if one exists); • annual summary 301a; • MIOSHA 301 incident report; and • MIOSHA 200 and 101 (old forms). Employers must also comply with the Fed-OSHA requirement for accurate and timely records and reports of work illnesses and injuries, and employee exposures to potentially toxic substances or harmful physical agents.[187] Employers must also keep accurate and timely records and reports of workplace illnesses and injuries, and employee exposures to potentially toxic substances or harmful physical agents that are required to be monitored or measured by standards promulgated by the Commissions.[188]	5 years following the end of the calendar year that the records cover. None specified.
Workplace Safety: Medical & Exposure Records	All employers must maintain records necessary to comply with federal OSHA regulations[189]	See federal requirements.

3.1(c) *Personnel Files*

3.1(c)(i) *Federal Guidelines on Personnel Files*

Federal law does not address access to personnel files for private-sector employees.

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[186] MICH. ADMIN. CODE r. 325.77002.

[187] MICH. ADMIN. CODE r. 408.22133.

[188] MICH. COMP. LAWS § 408.1061.

[189] MICH. ADMIN. CODE r. 325.3451.

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3.1(c)(ii) *State Guidelines on Personnel Files*

In Michigan, employees and former employees have the statutory right to access their personnel record. A *personnel record* means a record kept by the employer that:

- identifies the employee;
- is or may be used to determine the employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action; and
- includes records in the possession of a third party who has a contract with the employer to maintain personnel records.

Personnel record does *not* include:

- employee references supplied to the employer if the identity of the person making the reference would be disclosed;
- materials relating to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plans, promotions, and job assignments;
- medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility;
- information of a personal nature about a person other than the employee, if disclosure of the information would constitute a clearly unwarranted invasion of privacy;
- information that is kept separately from other records and that relates to an investigation by the employer of criminal activity that might result in loss or damage to the employer's property or disruption of the employer's business;
- records limited to grievance investigations that are kept separately;
- records maintained by an educational institution which are directly related to a student and are considered to be education records; or
- records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, such a record concerning an occurrence or fact about an employee may be entered into a personnel record if entered not more than six months after the date of the occurrence or the date the fact becomes known.[190]

An employer may not gather or keep records of an employee's associations, political activities, publications, or communications of nonemployment activities, unless the information is submitted in writing or authorized in writing by the employee to be kept or gathered.[191]

If an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, the employer may keep a separate file with related information. Upon completion of the investigation or after two years, whichever comes first, the

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[190] MICH. COMP. LAWS § 423.501.

[191] MICH. COMP. LAWS § 423.508.

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employee must be notified of the investigation. Upon completion of the investigation, if no disciplinary action is taken, the file and all copies must be destroyed.[192]

Additional restrictions apply before an employer may release information to a third party.[193]

Access to Personnel Files. Upon written request, an employee or former employee must be provided with an opportunity to periodically review their personnel record. If the employer maintains such a record, such review must be at reasonable intervals, generally not more than two times per calendar year.[194]

Review of the personnel file must take place at a location reasonably near the employee's place of employment and during normal office hours. If a review during normal office hours would require an employee to take time off from work, the employer must provide some other reasonable time for the review. The employer may allow the review to take place at another time or location that would be more convenient to the employee.[195] An employee may obtain copies of all or part of their personnel file. An employer may charge a fee for such copies; however, the fee cannot exceed the actual cost of duplication. If the employee demonstrates that the employee is unable to review the file at the employing unit, upon written request, the employer must mail a copy of the personnel file to the employee.[196]

Disputes Over Personnel Files. If an employee disagrees with information in their personnel file, the employee and employer may agree to remove or correct the information. If they cannot agree, the employee may submit a written statement explaining the employee's position. The statement must remain in the personnel file as long as the original information is in the file and be included in any disclosure to a third party. The statement may not exceed five pages of 8½ by 11-inch paper.[197]

3.2 Privacy Issues for Employees

3.2(a) *Background Screening of Current Employees*

3.2(a)(i) *Federal Guidelines on Background Screening of Current Employees*

For information on federal law related to background screening of current employees, see **1.3**.

3.2(a)(ii) *State Guidelines on Background Screening of Current Employees*

For information on state law related to background screening of current employees, see **1.3**.

3.2(b) *Drug & Alcohol Testing of Current Employees*

3.2(b)(i) *Federal Guidelines on Drug & Alcohol Testing of Current Employees*

For information on federal laws requiring drug testing of current employees, see **1.3(e)(i)**.

[192] MICH. COMP. LAWS § 423.509.

[193] MICH. COMP. LAWS § 423.507.

[194] MICH. COMP. LAWS § 423.503.

[195] MICH. COMP. LAWS § 423.503.

[196] MICH. COMP. LAWS § 423.504.

[197] MICH. COMP. LAWS § 423.505.

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3.2(b)(ii) *State Guidelines on Drug & Alcohol Testing of Current Employees*

Michigan law contains no express provisions regulating drug and alcohol testing of current employees.

3.2(c) *Marijuana Laws*

3.2(c)(i) *Federal Guidelines on Marijuana*

Under federal law, it is illegal to possess or use marijuana.[198]

3.2(c)(ii) *State Guidelines on Marijuana*

Michigan voters approved the Michigan Medical Marihuana Act (MMMA) in 2008, and the Michigan Regulation and Taxation of Marihuana Act (MRTMA) in 2018.

Neither law expressly prohibits employers from discriminating against medical or recreational marijuana users. However, at least one state appellate court has concluded the MMMA does not create a protected class for medical marijuana users.[199]

Under the MRTMA, an employer can discipline an employee for violating a workplace drug policy or for working while under the influence of marijuana.[200] Additionally, employers can refuse to hire, discharge, discipline, or otherwise take adverse action against a person with respect to hiring, tenure, terms, conditions, or privileges of employment because that person violated a workplace drug policy or was working while under the influence of marijuana.[201] The MMMA does not contain similar, relevant provisions; however, state and federal courts have examined what protections, if any, the law provides for failed drug tests.

State and federal appellate courts have concluded the MMMA did not protect prospective or actual employees that failed a drug test in violation of the employer's drug testing policy. A state appellate court held that no cause of action under the MMMA for the withdrawal of conditional offer of employment based on positive drug screen results connected to medical marijuana use.[202] A federal appeals court held an employee could be fired for a failed drug test connected to medical marijuana use.[203]

However, in three consolidated opinions, a state appellate court held that employees who were fired for failing to pass a drug test were entitled to unemployment benefits.[204] The court concluded that, although testing positive for marijuana ordinarily disqualified a claimant from benefits, "because there was no evidence that the positive drug tests were a result of anything other than the medical use of marijuana in accordance with the terms of the MMMA, denial of the unemployment benefits constituted a penalty that ran afoul of the MMA's immunity clause."[205] Moreover, it held that "to the extent another law would penalize an individual for using medical marijuana in accordance with the MMMA, that law is superseded

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[198] 21 U.S.C. §§ 811-12, 841 *et seq*.

[199] *Eplee v. City of Lansing*, 935 N.W.2d 104 (Mich. Ct. App. 2019).

[200] MICH. COMP. LAWS § 333.27954(3).

[201] MICH. COMP. LAWS § 333.27954(3).

[202] *Eplee v. City of Lansing*, 935 N.W.2d 104 (Mich. Ct. App. 2019) (Examining Mich. Comp. Laws § 333.26424(a)).

[203] *Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 437 (6th Cir. 2012).

[204] *Braska v. Challenge Mfg. Co.*, 861 N.W.2d 289 (Mich. Ct. App. 2014).

[205] 861 N.W.2d at 298 n.5 (Examining Mich. Comp. Laws § 333.26424(a)).

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by the MMMA."[206] Accordingly, because the MMMA preempts the unemployment law, the claimants were entitled to benefits.

Under the MRTMA, an employer is not required to permit or accommodate conduct allowed by the law in any workplace or on the employer's property.[207] Under the MMMA, employers do not have to accommodate the ingestion of marijuana in any workplace, or accommodate an employee working while under the influence of marijuana.[208]

The MRTMA prohibits:

- while under the influence of marijuana, or consuming marijuana while, operating, navigating, or being in physical control of any motor vehicle, aircraft, snowmobile, off-road recreational vehicle, or motorboat while under the influence of marijuana;
- smoking marijuana in the passenger area of a vehicle upon a public way; and
- consuming, or smoking, marijuana in a public place where prohibited by the person who owns, occupies, or manages the property (except in designated public places for individuals 21 years old and older).[209]

Moreover, a person can prohibit or otherwise regulate the consumption, cultivation, distribution, processing, sale or display of marijuana (and accessories) on property the person owns, occupies, or manages.[210]

The MRTMA does not limit any person's privileges, rights, immunities, or defenses under the medical marijuana law, or any other Michigan law allowing for, or regulation, medical marijuana use.[211]

Finally, it does not supersede any applicable federal law, except where allowed by federal law.[212]

Additionally, the MMMA does not permit:

- undertaking any task under the influence of marijuana when doing so would constitute negligence or professional malpractice; or
- operating, navigating, or being in actual physical control of any motor vehicle, aircraft, or motorboat while under the influence of marijuana.[213]

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[206] 861 N.W.2d at 298.

[207] MICH. COMP. LAWS § 333.27954(3).

[208] MICH. COMP. LAWS § 333.26427. *See Casias v. Wal-Mart Stores, Inc.*, 695 F.3d 428, 437 (6th Cir. 2012) (MMMA does not require employers to accommodate medical marijuana use in the workplace).

[209] MICH. COMP. LAWS § 333.27954(1).

[210] MICH. COMP. LAWS § 333.27954(4).

[211] MICH. COMP. LAWS § 333.27954(2).

[212] MICH. COMP. LAWS § 333.27967.

[213] MICH. COMP. LAWS § 333.26427(b).

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A commercial or nonprofit health insurer is not required to reimburse a person for costs associated with the medical use of marijuana.[214]

3.2(d) *Data Security Breach*

3.2(d)(i) *Federal Data Security Breach Guidelines*

Federal law does not contain a data security breach notification statute. However, of interest to employers that provide identity theft protection services to individuals affected by a data security breach, whether voluntarily or as required by state law:

- An employer providing identity protection services to an employee whose personal information may have been compromised due to a data security breach is not required to include the value of the identity protection services in the employee's gross income and wages.
- An individual whose personal information may have been compromised in a data breach is not required to include in their gross income the value of the identity protection services.
- The value of the provided identity theft protection services is not required to be reported on an information return (such as Form W-2 or Form 1099-MISC) filed with respect to affected employees.[215]

The tax relief provisions above do not apply to:

- cash provided in lieu of identity protection services;
- identity protection services provided for reasons other than as a result of a data breach, such as identity protection services received in connection with an employee's compensation benefit package; or
- proceeds received under an identity theft insurance policy.[216]

3.2(d)(ii) *State Data Security Breach Guidelines*

In Michigan, when a covered entity discovers or is notified of a security breach, it must determine if the breach is likely to cause substantial loss or injury to, or result in identity theft of a Michigan resident; if so, the covered entity must provide notice to all those affected.[217] A *security breach* is unauthorized access and acquisition of data that compromises the security or confidentiality of personal information maintained by any person or agency as part of a database of personal information regarding multiple individuals.[218]

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[214] MICH. COMP. LAWS § 333.26427(c).

[215] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015), *available at* https://www.irs.gov/pub/irs-drop/a-15-22.pdf.

[216] I.R.S. Announcement 2015-22, *Federal Tax Treatment of Identity Protection Services Provided to Data Breach Victims* (Aug. 14, 2015).

[217] MICH. COMP. LAWS § 445.72.

[218] MICH. COMP. LAWS § 445.63(b).

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Covered Entities & Information. A covered entity is any person or business that owns or licenses data included in a database. *Personal information* includes an individual's first name or first initial and last name in combination with any one or more of the following:

- Social Security number;
- driver's license number or state personal identification card and number; or
- direct deposit or other financial account number, or credit card or debit card number, in combination with any required security code, access code, or password that would permit access to any of the resident's financial accounts.[219]

The covered entity must provide notice to an individual: (1) whose unencrypted personal information was or may have been acquired by an unauthorized person; or (2) whose encrypted personal information was or may have been acquired by an unauthorized person with access to the encryption key.

The notice requirement does not apply to information that is lawfully available publicly through federal, local, or state government records or data that is encrypted or redacted (*i.e.*, redacted or altered data so that no more than four digits, or five digits of a Social Security Number, are accessible).[220]

Additionally, notice is not necessary if the security breach is not likely to cause substantial loss or injury, or result in identity theft of an individual. In determining that likelihood, the covered entity must act with the care that an ordinarily prudent person in a like position would exercise under similar conditions.[221]

Content & Form of Notice. Notice must be written in a clear and conspicuous manner and contain:

- a description of the security breach in general;
- a description of the type of personal information subject to the unauthorized access or use;
- generally describes what the agency or person providing the notice has done to protect data from further security breaches;
- include a telephone number where a notice recipient may obtain assistance or additional information; and
- remind notice recipients of the need to remain vigilant for incidents of fraud and identity theft.[222]

Notice may be in one of the following formats:

- written notice sent to the recipient at the recipient's postal address in the records of the covered entity;
  - written notice sent electronically to the recipient if: (1) the recipient has expressly consented to receive electronic notice; (2) the covered entity has an existing business relationship with the recipient that includes periodic electronic mail communications and

[219] MICH. COMP. LAWS § 445.63(r).

[220] MICH. COMP. LAWS § 445.72.

[221] MICH. COMP. LAWS § 445.72(3).

[222] MICH. COMP. LAWS § 445.72(6).

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based on those communications the covered entity believes that it has the recipient's current electronic mail address; or (3) the person or agency conducts its business primarily through internet account transactions.

- if not otherwise prohibited by state or federal law, notice given by telephone by an individual who represents the covered entity if: (1) the notice is not given by use of a recorded message; and (2) the recipient has expressly consented to receive notice by telephone, or if the recipient has not expressly consented to receive notice by telephone, the covered entity also provides written notice by mail or email if the notice by telephone does not result in a live conversation between the individual representing the covered entity and the recipient within three business days after the initial attempt to provide telephonic notice; or
- substitute notice may be utilized if the covered entity demonstrates that:
  - the cost of providing notice would exceed $250,000; or
  - the affected class of persons to be notified exceeds 500,000.[223]

Substitute notice must consist of all of the following:

- electronic mail notice when the covered entity has an electronic mail address for the subject persons;
- conspicuous posting of the notice on the website of the covered entity if the covered entity maintains a website; and
- notification by major statewide media which includes a telephone number or a website address that any person may use to obtain additional assistance and information.[224]

Exceptions. There are multiple exceptions to the notification requirement. A covered entity is deemed in compliance with the statutory notice requirement if:

- it has an agreement with an individual to provide notice in the event of a security breach and the provisions of that agreement do not conflict with the statute;
- it complies with the notification requirements or security breach procedures of its primary or functional federal regulator; or
- is subject to and in compliance with the federal HIPAA laws and regulations.

A special exception applies to a public utility that sends monthly billing or account statement to the postal address of its customers. Such an entity may provide notice of a security breach by utilizing all of the following methods:

- written notice sent electronically, if any of the following are met:
  - the recipient has expressly consented to receive electronic notice;
  - the person or agency has an existing business relationship with the recipient that includes periodic electronic mail communications and based on those communications the person

[223] MICH. COMP. LAWS § 445.72(5).

[224] MICH. COMP. LAWS § 445.72(5)(d).

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or agency reasonable believes that it has the recipient's current electronic mail address; or

- the person or agency conducts its business primarily through internet account transactions or on the internet.

- notification to the media reasonably calculated to inform the customers of the public utility of the security breach;
- conspicuous posting of the notice of the security breach on the entity's website; *and*
- written notice sent in conjunction with the monthly billing or account statement to the customer at the customer's postal address in the records of the public utility.[225]

Timing of Notice. Notice must be given without unreasonable delay. However, notification may be delayed if:

- a law enforcement agency indicates that notification will impede a criminal investigation or will jeopardize homeland or national security;
- a covered entity needs time to determine the scope of the breach; or
- a covered entity needs time to restore the reasonable integrity of the data system.[226]

Additional Provisions. If more than 1,000 residents will be notified of a security breach, then the covered entity must also notify all nationwide consumer reporting agencies of the breach, notice and timing of the notice. This section does not apply to a covered entity that is subject to and compliant with the Gramm-Leach-Bliley Act.[227]

3.3 Minimum Wage & Overtime

3.3(a) *Federal Guidelines on Minimum Wage & Overtime*

The primary source of federal wage and hour regulation is the Fair Labor Standards Act (FLSA). The FLSA establishes minimum wage, overtime, and child labor standards for covered employers. The FLSA applies to businesses that have: (1) annual gross revenue exceeding $500,000; and (2) employees engaged in commerce or in the production of goods for commerce, or employees that handle, sell, or otherwise work on goods or material that have been moved in or produced for commerce. For more information on this topic, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

As a general rule, federal wage and hour laws do not preempt state laws.[228] Thus, an employer must determine whether the FLSA or state law imposes a more stringent minimum wage, overtime, or child labor obligation and, if so, apply the more stringent of the two standards. If an employee is exempt from either federal or state law, but not both, then the employee must be paid for work in accordance with whichever law applies.

[225] MICH. COMP. LAWS § 445.72(8)-(12).

[226] MICH. COMP. LAWS § 445.72(4).

[227] MICH. COMP. LAWS § 445.72(8).

[228] 29 U.S.C. § 218(a).

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3.3(a)(i) *Federal Minimum Wage Obligations*

The current federal minimum wage is $7.25 per hour for most nonexempt employees.[229]

Tipped employees are paid differently. If an employee earns sufficient tips, an employer may take a maximum tip credit of up to $5.12 per hour. Therefore, the minimum cash wage that a tipped employee must be paid is $2.13 per hour. Note that if an employee does not make $5.12 in tips per hour, an employer must make up the difference between the wage actually made and the federal minimum wage of $7.25 per hour. An employer bears the burden of proving that it is not taking a tip credit larger than the amount of tips actually received by the employee.[230]

An employer cannot keep tips received by employees for any purpose, including allowing managers or supervisors to keep a portion of employees' tips, regardless of whether the employer takes a tip credit.[231]

3.3(a)(ii) *Federal Overtime Obligations*

Nonexempt employees must be paid one-and-a-half times their regular rate of pay for all hours worked over 40 in a workweek.[232] For more information on exemptions to the federal minimum wage and/or overtime obligations, see **LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS**.

3.3(b) *State Guidelines on Minimum Wage Obligations*

3.3(b)(i) *State Minimum Wage*

Before *Mothering Justice v. Attorney General*, 2024 Mich. LEXIS 1454 (July 31, 2024), in which the Michigan Supreme Court voided the then-current minimum wage law and reinstated a version of the law that the state had approved but – per the court - unlawfully amended before it took effect, as of January 1, 2024, the minimum wage in Michigan was $10.33 per hour for nonexempt employees of employers with two or more employees. The *Mothering Justice* decision reinstates what were to be future minimum wage increases scheduled (see Table 9).[233] Moreover, the court ordered the state to adjust what were to be the preset rates due to inflation through July 31, 2024. Although questions remain concerning the minimum wage rate from the court's July 31, 2024 decision through February 20, 2025, the state labor department continues to cite the $10.33 figure.

3.3(b)(ii) *Tipped Employees*

Tipped employees are paid differently. If an employee earns tips, an employer may take a maximum tip credit up to a certain dollar amount per hour and pay a specified minimum cash wage per hour—38% of the minimum wage (see Table 9). Note that if an employee does not make the tip credit amount in tips per hour, the employer must make up the difference between the wage actually made and the minimum

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[229] 29 U.S.C. § 206.

[230] 29 U.S.C. §§ 203, 206.

[231] 29 U.S.C. § 3(m)(2)(B).

[232] 29 U.S.C. § 207.

[233] MICH. COMP. LAWS § 408.934. On December 11, 2020, Michigan's Wage and Hour Division issued a press release, Minimum wage increase unlikely to take effect on Jan. 1. Later, it created a webpage confirming the rates will not increase, The Michigan minimum wage effective January 1, 2021 remained $9.65. Accordingly, there was a one-year delay in the preset rate schedule identified in Table 9 rate schedule, thereby extending the schedule by one year, *i.e.*, the rates in 2022 will be what, originally, the rates were supposed to be in 2021 had unemployment numbers not been so high, triggering the rate freeze.

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wage.[234] However, the *Mothering Justice* decision reinstates what were to be gradual decreases to the minimum cash wage, eventually resulting in employers' inability to apply a tip credit, thereby requiring payment of the full minimum wage (see Table 9). However, until the state labor department provides guidance, questions remain concerning the precise date the law prohibits tip credits because in the court's order the minimum cash wage transitions from 80% of the minimum wage on February 21, 2028, to 100% of the minimum wage on February 21, 2029, but under the rate schedule in the reinstated law there is a one-year period in between in which the minimum cash wage is to be 90% of the minimum wage.

Table 9. Minimum Wage & Tip Credit Schedule

Date	Minimum Wage	Minimum Cash Wage	Maximum Tip Credit
January 1, 2024	$10.33 (Unclear	$3.93	$6.40
February 21, 2025	$10.00 Plus CPI Adjustment	48% of Minimum Wage	TBD
February 21, 2026	$10.65 Plus CPI Adjustment	60% of Minimum Wage	TBD
February 21, 2027	$11.35 Plus CPI Adjustment	70% of Minimum Wage	TBD
February 21, 2028	$12.00 Plus CPI Adjustment	80% of Minimum Wage	TBD
February 21, 2029	TBD	100% of Minimum Wage (Per *Mothering Justice*)	TBD

3.3(b)(iii) *Minimum Wage Exceptions & Rates Applicable to Specific Groups*

Michigan's minimum wage provisions do not apply to the following employees:

- individuals under the age of 18 hired to provide childcare on a casual basis not exceeding 20 hours per week;
- individuals employed in summer camps for not more than four months;
- students, learners, and apprentices as defined under the FLSA and students employed at their own elementary or secondary school if the employment is an integral part of the regular education program provided by the school and is in accordance with applicable child labor laws; or
- certain agricultural fruit growers, pickle growers, and tomato growers, or other agricultural employers that traditionally contract for harvesting on a piece-work basis.[235]

Michigan employers may also be permitted to pay subminimum wage under certain conditions. The minimum wage for an employee under 18 years of age is 85% of the general minimum wage.[236] An

234 MICH. COMP. LAWS §§ 408.934, 408.934d.

235 MICH. COMP. LAWS § 408.420.

236 MICH. COMP. LAWS § 408.414b.

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employer may pay a new employee who is less than 20 years of age a training wage of $4.25 per hour for the first 90 days of employment.[237] An employer may also petition the state labor commissioner to establish a subminimum wage for apprentices, learners, and persons with physical or mental disabilities who are clearly unable to meet normal production standards.[238]

3.3(c) *State Guidelines on Overtime Obligations*

In Michigan, employers with two or more employees must pay nonexempt employees one-and-a-half times their regular rate for all hours worked over 40 in a week.[239] Generally speaking, Michigan overtime requirements do not apply to FLSA-covered employers or employees that are exempt from the FLSA's minimum wage requirements.[240] However, exceptions to the rule may apply. Michigan's coverage carve-out is complicated. When determining whether Michigan law is applicable, employers should consult knowledgeable counsel to discuss coverage parameters and whether and how the carve-out applies.

3.3(d) *State Guidelines on Overtime Exemptions*

Generally speaking, Michigan overtime requirements do not apply to FLSA-covered employers or employees that are exempt from the FLSA's minimum wage requirements.[241] However, exceptions to the rule may apply. Michigan's coverage carve-out is complicated. When determining whether Michigan law is applicable, employers should consult knowledgeable counsel to discuss coverage parameters and whether and how the carve-out applies.

Further, Michigan's overtime requirements do not apply to:

- an employee employed in a *bona fide* executive, administrative, or professional capacity, as described in detail below;
- an individual who holds a public elective office;
- a political appointee of a person holding public elective office or a political appointee of a public body, if the political appointee is not covered by a civil service system;
- an employee of an amusement or recreational establishment, if the establishment does not operate for more than seven months in a calendar year;
- 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; or
- an employee who is not subject to the state's minimum hourly wage provisions.

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[237] MICH. COMP. LAWS § 408.414b.

[238] MICH. COMP. LAWS § 408.414c.

[239] MICH. COMP. LAWS § 408.414a.

[240] MICH. COMP. LAWS § 408.420.

[241] MICH. COMP. LAWS § 408.420.

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Before turning to the executive, administrative, and professional exemptions under Michigan law, it is important to reiterate that federal wage and hour laws do not preempt state laws[242] and that the law most beneficial to the employee will apply. Therefore, even if an employee meets one of the exemptions discussed below under state law, if the employee does not meet the requirements of the federal exemption, including the salary thresholds, then the employee will not qualify as exempt.

Unlike some other states' laws, Michigan law does not contain an express exemption for commissioned sales employees[243] or for outside sales employees.[244]

3.3(d)(i) *Executive Exemption*

Under Michigan law, an employee is covered by the executive exemption if the employee meets these requirements:

- the employee is paid on a salary basis at not less than the federal standard salary level per week for overtime-exempt employees;
- the employee's primary duty is management; and
- the employee supervises two or more employees.[245]

An employee of a retail or service establishment is *not* excluded from the definition of an individual employed in a *bona fide* executive capacity because of the number of hours in the workweek the employee devotes to activities not directly or closely related to the performance of executive activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.[246]

3.3(d)(ii) *Administrative Exemption*

An employee is covered by the administrative exemption under Michigan law if the employee meets these requirements:

- the employee is paid on a salary basis at not less than the federal standard salary level per week for overtime exempt employees;
- the employee's primary duty is performance of office or nonmanual work directly related to the management or general business operations of the employer; and
- the employee uses discretion and independent judgment in matters of significance.[247]

An employee of a retail or service establishment is *not* excluded from the definition of an individual employed in a *bona fide* administrative capacity because of the number of hours in the workweek the

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[242] 29 U.S.C. § 218(a).

[243] *See* MICH. COMP. LAWS § 408.414a.

[244] MICH. COMP. LAWS § 408.420.

[245] MICH. ADMIN CODE r. 408.701.

[246] MICH. COMP. LAWS § 408.414a.

[247] MICH. ADMIN CODE r. 408.701.

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employee devotes to activities not directly or closely related to the performance of executive activities, if less than 40% of the employee's hours in the workweek are devoted to those activities.[248]

3.3(d)(iii) *Professional Exemption*

Under Michigan law, an employee is covered by the professional exemption if the employee meets these requirements:

- the employee is paid on a salary or fee basis at no less than the federal standard salary level per week for overtime-exempt employees; and
- the employee's primary duty is any of the following:
  - work in a field of science or learning that requires knowledge acquired by a prolonged course of specialized instruction;
  - work in a recognized field of artistic endeavor that depends upon the talent of the employee; or
  - work in an educational institution as a teacher, tutor, instructor, or lecturer.[249]

3.4 Meal & Rest Period Requirements

3.4(a) *Federal Meal & Rest Period Guidelines*

3.4(a)(i) *Federal Meal & Rest Periods for Adults*

Federal law contains no generally applicable meal period requirements for adults. Under the FLSA, *bona fide* meal periods (which do not include coffee breaks or time for snacks and which ordinarily last 30 minutes or more) are not considered "hours worked" and can be unpaid.[250] Employees must be completely relieved from duty for the purpose of eating regular meals. Employees are *not* relieved if they are required to perform any duties—active or inactive—while eating. It is not necessary that employees be permitted to leave the premises if they are otherwise completely freed from duties during meal periods.

Federal law contains no generally applicable rest period requirements for adults. Under the FLSA, rest periods of short duration, running from five to 20 minutes, must be counted as "hours worked" and must be paid.[251]

3.4(a)(ii) *Federal Meal & Rest Periods for Minors*

The FLSA does not include any generally applicable meal and rest period requirements for minors. The principles described above as to what constitutes "hours worked" for meal and rest periods applies to minors as well as to adults.

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[248] MICH. COMP. LAWS § 408.414a.

[249] MICH. COMP. LAWS § 408.414a; MICH. ADMIN CODE r. 408.701.

[250] 29 C.F.R. § 785.19.

[251] 29 C.F.R. § 785.18.

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3.4(a)(iii) *Lactation Accommodation Under Federal Law*

The Providing Urgent Maternal Protections for Nursing Mothers Act ("PUMP Act"), which expands the FLSA's lactation accommodation provisions, applies to most employers.[252] Under the FLSA, an employer must provide a reasonable break time for an employee to express breast milk for the employee's nursing child for one year after the child's birth, each time the employee needs to express milk. The employer is not required to compensate an employee receiving reasonable break time for any time spent during the workday for the purpose of expressing milk unless otherwise required by federal, state, or local law. Under the PUMP Act, break time for expressing milk is considered hours worked if the employee is not completely relieved from duty during the entirety of the break.[253] An employer must also provide a place, other than a bathroom, that is shielded from view and free from intrusion from coworkers and the public, which may be used by an employee to express breast milk.[254] Exemptions apply for smaller employers and air carriers.[255]

The Pregnant Workers Fairness Act (PWFA), enacted in 2022, also impacts an employer's lactation accommodation obligations. The PWFA requires employers of 15 or more employees to make reasonable accommodations for a qualified employee's known limitations related to pregnancy, childbirth, or related medical conditions.[256] Lactation is considered a related medical condition.[257] Reasonable accommodation related to lactation includes, but is not limited to breaks, space for lactation, and accommodations related to pumping and nursing during work hours.[258] For more information on these topics, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

3.4(b) *State Meal & Rest Period Guidelines*

3.4(b)(i) *State Meal & Rest Periods for Adults*

There are no generally applicable meal or rest period requirements for adults in Michigan.

3.4(b)(ii) *State Meal & Rest Periods for Minors*

A minor may not be employed for more than five hours continuously without an interval of at least 30 minutes for a meal and rest period. An interval of less than 30 minutes is not considered adequate to interrupt a continuous period of work.[259] Additionally, an employer must post in or about the premises where a minor is employed a printed copy of Michigan's meal and rest period provision.[260]

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[252] 29 U.S.C. § 218d.

[253] 29 U.S.C. § 218d(b)(2).

[254] 29 U.S.C. § 218d(a).

[255] 29 U.S.C. § 218d(c), (d).

[256] 42 U.S.C. § 2000gg–1.

[257] 29 C.F.R. § 1636.3.

[258] 29 C.F.R. § 1636.3.

[259] MICH. COMP. LAWS § 409.112.

[260] MICH. COMP. LAWS § 409.113.

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3.4(b)(iii) *State Enforcement, Remedies & Penalties*

A violation of Michigan's child labor provisions is a misdemeanor, punishable by imprisonment up to one year, a fine up to $500, or both.[261]

3.4(b)(iv) *Lactation Accommodation Under State Law*

Michigan does not have a law governing breast feeding in the workplace. However, except where expressly permitted by state or federal law, a place of public accommodations cannot:

- deny the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation to a person because they are breast feeding a child; and
- print, circulate, post, mail, or otherwise cause to be published a statement, advertisement, notice, or sign that indicates any of the following:
  - that the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations will be refused, withheld from, or denied a person because the person is breast feeding a child; or
  - that a person's patronage of or presence at a place of public accommodation is objectionable, unwelcome, unacceptable, or undesirable because the person is breast feeding a child.[262]

3.5 Working Hours & Compensable Activities

3.5(a) *Federal Guidelines on Working Hours & Compensable Activities*

In contrast to some state laws that provide for mandatory days of rest, the FLSA does not limit the hours or days an employee can work and requires only that an employee be compensated for "all hours" worked in a workweek. Ironically, the FLSA does not define what constitutes hours of work.[263] Therefore, courts and agency regulations have developed a body of law looking at whether an activity—such as on-call, training, or travel time—is or is not "work." In addition, the Portal-to-Portal Act of 1947 excluded certain preliminary and postliminary activities from "work time."[264]

As a general rule, employee work time is compensable if expended for the employer's benefit, if controlled by the employer, or if allowed by the employer. All time spent in an employee's principal duties and all time spent in essential ancillary activities must be counted as work time. An employee's *principal duties* include an employee's productive tasks. However, the phrase is expansive enough to encompass not only those tasks an employee is employed to perform, but also tasks that are an "integral and indispensable" part of the principal activities. For more information on this topic, including information on whether time

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[261] MICH. COMP. LAWS § 409.122.

[262] MICH. COMP. LAWS §§ 117.5h (public nudity), 37.232 (lactation accommodation).

[263] The FLSA states only that to employ someone is to "suffer or permit" the individual to work. 29 U.S.C. § 203(g).

[264] *See, e.g.*, *Integrity Staffing Solutions, Inc. v. Busk*, 135 S. Ct. 513, 519 (2014) (in determining whether certain preliminary and postliminary activities are compensable work hours, the question is not whether an employer requires an activity (or whether the activity benefits the employer), but rather whether the activity "is tied to the productive work that the employee is employed to perform").

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spent traveling, changing clothes, undergoing security screenings, training, waiting or on-call time, and sleep time will constitute hours worked under the FLSA, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.5(b) *State Guidelines on Working Hours & Compensable Activities*

Michigan law does not define what work activities are considered to be compensable activities, and state law does not address reporting time, on-call pay, travel time, split shifts, and other circumstances where the compensability of an employee's activities may be in question. Employers covered by the FLSA should consult the federal provisions.

3.6 Child Labor

3.6(a) *Federal Guidelines on Child Labor*

The FLSA limits the tasks minors, defined as persons under 18 years of age, can perform and the hours they can work. Occupational limits placed on minors vary depending on the age of the minor and whether the work is in an agricultural or nonagricultural occupation. There are exceptions to the list of prohibited activities for apprentices and student-learners, or if an individual is enrolled in and employed pursuant to approved school-supervised and school-administered work experience and career exploration programs.[265] Additional latitude is also granted where minors are employed by their parents.

Considerable penalties can be imposed for violation of the child labor requirements, and goods made in violation of the child labor provisions may be seized without compensation to the employer. Employers may protect themselves from unintentional violations of child labor provisions by maintaining an employment or age certificate indicating an acceptable age for the occupation and hours worked.[266] For more information on the FLSA's child labor restrictions, see LITTLER ON FEDERAL WAGE & HOUR OBLIGATIONS.

3.6(b) *State Guidelines on Child Labor*

In Michigan, a minor under age 18 cannot perform work that is hazardous or injurious to their health or personal well-being or that is contrary to standards established under state law, unless a deviation is granted.[267] An employee at least age 18 must supervise working minors.[268]

3.6(b)(i) *State Restrictions on Type of Employment for Minors*

General Restrictions. Table 10 summarizes the state restrictions on type of employment by age.

Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
Under Age 18	*Minors under age 18 cannot perform the following work or occupations:* • construction, excavation, and roofing; • wrecking and demolition; • ship-breaking;

[265] 29 C.F.R. §§ 570.36, 570.50.

[266] 29 C.F.R. § 570.6.

[267] MICH. COMP. LAWS § 409.103.

[268] MICH. ADMIN. CODE r. 408.6207.

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Table 10. State Restrictions on Type of Employment by Age	
Age Range	**Restrictions**
	• working with explosive materials, hazardous substances, radioactive substance, or respiratory equipment; • working in confined spaces; • machine operation and maintenance; • working with special equipment or power-driven machinery; • occupations that require the operation of a motor vehicle on any public road or highway (subject to exceptions) or as an outside helper (anyone other than the driver, whose work includes riding on a motor vehicle outside the cab) on any motor vehicle on a public highway; • brick, tile, and kindred product manufacturing; • welding and heat treating; • brazing and soldering; • tanning; • logging and sawmilling; • mining; • foundry work; • operation of lawn care equipment; • meat slaughtering, packing establishments; • working from ladders or scaffolding; and • firefighting.[269] In addition, minors cannot be employed in an occupation that involves cash transactions after sunset or 8:00 P.M., whichever is earlier, at a fixed location unless an employer or other employee age 18 or older is present during those hours.[270]
Under Age 14	In Michigan, minors under age 14 cannot be employed, subject to limited exceptions.[271]

Restrictions on Selling or Serving Alcohol. In Michigan, minors aged 16 and 17 cannot work at establishments where alcoholic beverages are distilled, rectified, compounded, brewed, manufactured, bottled, consumed, distributed, sold at retail, or sold for on-premises consumption unless food or other goods sales constitute at least 50% of the total gross receipts.[272] Minors aged 14 or 15 can work in establishments where alcoholic beverages are sold at retail, if the food or other goods sales constitute at least 50% of the total gross receipts of the establishment. However, minors age 14 and 15 cannot work at establishments where alcohol is consumed or sold for on-premises consumption.[273]

[269] MICH. COMP. LAWS § 409.103; MICH. ADMIN. CODE r. 408.6207, 408.6208, and 408.6209.

[270] MICH. COMP. LAWS § 409.112a.

[271] MICH. COMP. LAWS § 409.103.

[272] MICH. COMP. LAWS § 409.115.

[273] MICH. COMP. LAWS § 409.115.

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3.6(b)(ii) *State Limits on Hours of Work for Minors*

Ages 16 & 17. In Michigan, minors age 16 and 17 cannot work:

- more than 10 hours per day (with a weekly average of no more than eight hours per day);
- more than 48 hours per week (24 hours if in school and school is in session; further, the combined hours of work and school cannot exceed 48 hours when school is in session)
- six days per week;
- between 10:30 P.M. and 6:00 A.M. (except that minors can work until 11:30 P.M. during school vacation periods or when they are not regularly enrolled in school, or on Friday and Saturdays);
- after sunset or 8:00 P.M., whichever is earlier, in occupations involving cash transactions, unless an employer or other employee age 18 or older is also present; and
- during school hours (if required to attend school).

These restrictions do not apply to: (1) minors age 16 or older who have graduated from high school; (2) minors age 17 who have passed the GED test; (3) emancipated minors; (4) minors age 14 or older if a written agreement or contract exists between an employer and school district, if employment does not violate federal law; and (5) work performed during school hours, if the minor is enrolled and employed under a work-related education program.[274]

Ages 14 & 15. In Michigan, minors age 14 and 15 have the same hour restrictions as noted above for minors age 16 and 17, except that they cannot work between the hours of 9:00 P.M. and 7:00 A.M.[275] These restrictions do not apply to minors employed at businesses owned by their parent or guardian, or performing domestic chores in connection with a private residence.

Special rules also apply to minors working in certain farming operations or in agricultural processing.[276]

3.6(b)(iii) *State Child Labor Exceptions*

Michigan's restrictions on the employment of minors do not apply to:

- businesses owned and operated by a minor's parent or guardian;
- newspaper sales and distribution;
- employment by a school;
- minors aged 16 or older who completed the requirements for high school graduation or who obtained a high school equivalency certificate;
- minors age 17 or older who have successfully passed the GED test; and
- emancipated minors.

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[274] MICH. COMP. LAWS §§ 409.111, 409.112a, 409.116, 409.117, 409.118, and 409.119.

[275] MICH. COMP. LAWS §§ 409.110, 409.112a.

[276] MICH. COMP. LAWS § 408.119.

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Minors aged 14 or older who are students may be employed when a written agreement or contract exists between an employer and the school district, if the employment does not violate federal law.[277]

3.6(b)(iv) *State Work Permit or Waiver Requirements*

Under Age 18. In Michigan, employers must keep on file at the place of employment a copy of each minor's work permit or a temporary permit. Permits must be immediately returned upon termination.[278]

Age 17 & Older. For minors age 17 or older who successfully passed the GED test before being employed, employers must obtain and keep proof that the individual successfully completed the requirements.[279]

Age 16 & Older. For minors age 16 or older who completed the requirements for high school graduation or who obtained a high school equivalency certificate before being employed, employers must obtain and keep either certification from the individual's school that the individual completed the graduation requirement or an equivalency certificate.[280]

Emancipated Minors. In Michigan, for emancipated minors, prior to hiring, an employer must obtain and keep on file proof of the minor's emancipated status.[281]

The work permit requirements do not apply to:

- certain minors 13 years of age or older employed in farming operations during school vacation periods or when not regularly enrolled in school; and
- minors performing unpaid volunteer work for tax-exempt or 501(c)(3) organizations.[282]

3.6(b)(v) *State Enforcement, Remedies & Penalties*

The Michigan Department of Labor and Economic Opportunity enforces the state's child labor statutes. The department has the authority to enter and inspect any place where a minor may be employed and to access to the employer's work permits, age certificates, or other proof of age and time records.[283] In general, a person who employs a minor in violation of the child labor statutes or obstructs the department in its enforcement authority is guilty of a misdemeanor , punishable by imprisonment for not more than one year, a fine of not more than $500, or both.[284]

An employer that violates the prohibition against minors working in an occupation involving cash transactions after sunset or 8:00 P.M. is guilty of a misdemeanor punishable by imprisonment for not more than one year, a fine of not more than $2,000, or both. A person who commits a second offense of the latter provision is guilty of a misdemeanor punishable by imprisonment for not more than two years, a

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277 MICH. COMP. LAWS §§ 409.116, 409.117, 409.118, and 409.119.

278 MICH. COMP. LAWS § 409.104.

279 MICH. COMP. LAWS § 409.116.

280 MICH. COMP. LAWS § 409.116.

281 MICH. COMP. LAWS § 409.117.

282 MICH. COMP. LAWS § 409.104.

283 MICH. COMP. LAWS § 409.121.

284 MICH. COMP. LAWS § 409.122(1).

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fine of not more than $5,000, or both. A third or subsequent offense is considered a felony, and the person risks imprisonment for not more than 10 years, a fine of not more than $10,000, or both.[285]

3.7 Wage Payment Issues

3.7(a) *Federal Guidelines on Wage Payment*

There is no federal wage payment law. The FLSA covers minimum wage and overtime requirements, but would not generally be considered a "wage payment" law as the term is used in state law to define when and how wages must be paid.

3.7(a)(i) *Form of Payment Under Federal Law*

Authorized Instruments. Wages may be paid by cash, check, or facilities (*e.g.*, board or lodging).[286]

Direct Deposit. Neither the FLSA, nor its implementing regulations, address direct deposit of employee wages. The U.S. Department of Labor (DOL) has briefly considered the permissibility of direct deposit by stating:

> The payment of wages through direct deposit into an employee's bank account is an acceptable method of payment, provided employees have the option of receiving payment by cash or check directly from the employer. As an alternative, the employer may make arrangements for employees to cash a check drawn against the employer's payroll deposit account, if it is at a place convenient to their employment and without charge to them.[287]

According to the Consumer Financial Protection Bureau (CFPB), an employer may require direct deposit of wages by electronic means if the employee is allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their wages deposited at a particular institution (designated by the employer) or receiving their wages by another means, such as by check or cash.[288]

Payroll Debit Card. Employers may pay employees using payroll card accounts, so long as employees have the choice of receiving their wages by at least one other means.[289] The "prepaid rule" regulation defines a *payroll card account* as an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation such

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285 MICH. COMP. LAWS § 409.122(2).

286 U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf; *see also* 29 C.F.R. § 531.32 (description of "other facilities").

287 U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c00.

288 Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013), *available at* http://files.consumerfinance.gov/f/201309_cfpb_payroll-card-bulletin.pdf.

289 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *CFPB Bulletin 2013-10: Payroll Card Accounts (Regulation E)* (Sept. 12, 2013) and Consumer Fin. Prot. Bureau, *Ask CFPB: Prepaid Cards, If my employer offers me a payroll card, do I have to accept it?* (Sept. 4, 2020), *available at* https://www.consumerfinance.gov/ask-cfpb/if-my-employer-offers-me-a-payroll-card-do-i-have-to-accept-it-en-407/.

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as commissions are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person.[290]

Employers that use payroll card accounts must comply with several requirements set forth in the prepaid rule. Employers must give employees certain disclosures before the employees choose to be paid via a payroll card account, including a short-form disclosure, a long-form disclosure, and other information that must be disclosed in close proximity to the short-form disclosure. Employees must receive the short-form disclosure and either receive or have access to the long-form disclosure before the account is activated. All disclosures must be provided in writing. Importantly, within the short-form disclosure, employers must inform employees in writing and before the card is activated that they need not receive wages by payroll card. This disclosure must be very specific. It must provide a clear fee disclosure and include the following statement or an equivalent: "You do not have to accept this payroll card. Ask your employer about other ways to receive your wages." Alternatively, a financial institution or employer may provide a statement that the consumer has several options to receive wages or salary, followed by a list of the options available to the consumer, and directing the consumer to tell the employer which option the customer chooses using the following language or similar: "You have several options to receive your wages: [list of options]; or this payroll card. Tell your employer which option you choose." This statement must be located above the information about fees. A short-form disclosure covering a payroll card account also must contain a statement regarding state-required information or other fee discounts or waivers.[291] As part of the disclosures, employees must: (1) receive a statement of pay card fees; (2) have ready access to a statement of all fees and related information; and (3) receive periodic statements of recent account activity or free and easy access to this information online. Under the prepaid rule, employees have limited responsibility for unauthorized charges or other unauthorized access, provided they have registered their payroll card accounts.[292]

The CFPB provides numerous online resources regarding prepaid cards, including Frequently Asked Questions. Employers that use or plan to use payroll card accounts should consult these resources, in addition to the prepaid card regulation, and seek knowledgeable counsel.[293]

3.7(a)(ii) *Frequency of Payment Under Federal Law*

Federal law does not specify the timing of wage payment and does not prohibit payment on a semi-monthly or monthly basis. However, all wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned. FLSA regulations state that if

[290] 12 C.F.R. § 1005.2(b)(3)(i)(A).

[291] 12 C.F.R. § 1005.18; *see also* Consumer Fin. Prot. Bureau, *Guide to the Short Form Disclosure* (Mar. 2018), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_guide-to-short-form-disclosure.pdf; *Prepaid Disclosures* (Apr. 1, 2019), *available at* https://files.consumerfinance.gov/f/documents/102016_cfpb_PrepaidDisclosures.pdf.

[292] 12 C.F.R. § 1005.18.

[293] *See* Consumer Fin. Prot. Bureau, *Prepaid Cards*, *available at* https://www.consumerfinance.gov/ask-cfpb/category-prepaid-cards/ and *Prepaid Rule Small Entity Compliance Guide* (Apr.. 2019), *available at* https://files.consumerfinance.gov/f/documents/cfpb_prepaid_small-entity-compliance-guide.pdf.

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an employer cannot calculate how much it owes an employee in overtime by payday, it must pay that employee overtime as soon as possible and no later than the next payday.[294]

3.7(a)(iii) *Final Payment Under Federal Law*

Federal law does not address when final wages must be paid to discharged employees or to employees who voluntarily quit. However, as noted in 3.7(a)(ii), wages that are required by the FLSA are generally considered to be due on the payday for the pay period in which the wages were earned.

3.7(a)(iv) *Notification of Wage Payments & Wage Records Under Federal Law*

Federal law does not generally require employers to provide employees wage statements when wages are paid. However, federal law does require employers to furnish pay stubs to certain unique classifications of employees, including migrant farm workers.

Federal law does not address whether electronic delivery of earnings statements is permissible.

3.7(a)(v) *Changing Regular Paydays or Pay Rate Under Federal Law*

There are no general notice requirements under federal law should an employer wish to change an employee's payday or wage rate. However, it is recommended that employees receive advance written notice before a change in regular paydays or pay rate occurs.

3.7(a)(vi) *Paying for Expenses Under Federal Law*

The FLSA does not have a general expense reimbursement obligation. Nonetheless, it prohibits employers from circumventing minimum wage and overtime laws by passing onto employees the cost of items that are primarily for the benefit or convenience of the employer, if doing so reduces an employee's wages below the highest applicable minimum wage rate or cuts into overtime premium pay.[295] Because the FLSA requires an employer to pay minimum wage and overtime premiums "free and clear," the employer must reimburse employees for expenses that are primarily for the benefit of the employer if those expenses would reduce the applicable required minimum wage or overtime compensation.[296] Accordingly, among other items, an employer may be required to reimburse an employee for expenses related to work uniforms,[297] tools and equipment,[298] and business transportation and travel.[299] Additionally, if an employee is reimbursed for expenses normally incurred by an employee that primarily benefit the employer, the reimbursement cannot be included in the employee's regular rate.[300]

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[294] 29 C.F.R. § 778.106; *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30b04, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[295] *See* 29 U.S.C. §§ 203(m), 206; 29 C.F.R. §§ 531.2, 531.32(a), and 531.36(a); U.S. Dep't of Labor, Wage & Hour Div., *Fact Sheet #16: Deductions From Wages for Uniforms and Other Facilities Under the Fair Labor Standards Act (FLSA)* (rev. July 2009).

[296] 29 C.F.R. §§ 531.35, 531.36, and 531.37.

[297] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c12.

[298] 29 U.S.C. § 203(m); 29 C.F.R. §§ 531.3, 531.35; U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA 2001-7 (Feb. 16, 2001).

[299] 29 C.F.R. § 531.32; U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c04.

[300] 29 C.F.R. § 778.217.

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3.7(a)(vii) *Wage Deductions Under Federal Law*

Permissible Deductions. Under the FLSA, an employer can deduct:

- state and federal taxes, levies, and assessments (*e.g.*, income, Social Security, unemployment) from wages;[301]
- amounts ordered by a court to pay an employee's creditor, trustee, or other third party, under garnishment, wage attachment, trustee process, or bankruptcy proceedings (the employer or anyone acting on its behalf cannot profit from the transaction);[302]
- amounts as directed by an employee's voluntary assignment or order to pay an employee's creditor, donee, or other third party (the employer or agent cannot directly or indirectly profit or benefit from the transaction);[303]
- with an employee's authorization for:
  - the purchase of U.S. savings stamps or U.S. savings bonds;
  - union dues paid pursuant to a valid and lawful collective bargaining agreement;
  - payments to the employee's store accounts with merchants wholly independent of the employer;
  - insurance premiums, if paid to independent insurance companies where the employer is under no obligation to supply the insurance and derives, directly or indirectly, no benefit or profit from it; or
  - voluntary contributions to churches and charitable, fraternal, athletic, and social organizations, or societies from which the employer receives no profit or benefit, directly or indirectly;[304]
- the reasonable cost of providing employees board, lodging, or other facilities by including this cost as wages, if the employer customarily furnishes these facilities to employees;[305] or
- amounts for premiums the employer paid while maintaining benefits coverage for an employee during a leave of absence under the Family and Medical Leave Act if the employee fails to return from leave after leave is exhausted or expires, if the deductions do not otherwise violate applicable federal or state wage payment or other laws.[306]

Additionally, while the FLSA contains no express provisions concerning deductions relating to overpayments made to an employee, loans and advances, or negative vacation balance, informal guidance from the DOL suggests such deductions may nonetheless be permissible. While this informal guidance may be interpreted to permit a deduction for loans to employees, employers should consult with counsel

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[301] 29 C.F.R. § 531.38.

[302] 29 C.F.R. § 531.39. The amount subject to withholding is governed by the federal Consumer Credit Protection Act. 15 U.S.C. §§ 1671 *et seq*.

[303] 29 C.F.R. § 531.40.

[304] 29 C.F.R. § 531.40.

[305] 29 U.S.C. § 203. However, the cost cannot be treated as wages if prohibited under a collective bargaining agreement.

[306] 29 C.F.R. § 825.213.

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before deducting from an employee's wages. An employer can deduct the principal of a loan or wage advance, even if the deduction cuts into the minimum wage or overtime owed. However, deductions for interest or administrative costs on the loan or advance are illegal to the extent that they cut into the minimum wage or overtime pay. Loans or advances must be verified.[307]

An employer may also be able to deduct for wage overpayments even if the deduction cuts into the employee's FLSA minimum wage or overtime pay. The deduction can be made in the next pay period or several pay periods later. An employer cannot, however, charge an administrative fee or charge interest that brings the payment below the minimum wage.[308] Finally, if an employee is granted vacation pay before it accrues, with the understanding it constitutes an advance of pay, and the employee quits or is fired before the vacation is accrued, an employer can recoup the advanced vacation pay, even if this cuts into the minimum wage or overtime owed an employee.[309]

Deductions During Non-Overtime v. Overtime Workweeks. Whether an employee receives overtime during a given workweek affects an employer's ability to take deductions from the employee's wages. During non-overtime workweeks, an employer may make qualifying deductions (*i.e.*, the cost is reasonable and there is no employer profit) for "board, lodging, or other facilities" even if the deductions would reduce an employee's pay below the federal minimum wage. Deductions for articles that do not qualify as "board, lodging, or other facilities" (*e.g.*, tools, equipment, cash register shortages) can be made in non-overtime workweeks if, after the deduction, the employee is paid at least the federal minimum wage.[310]

During overtime workweeks, deductions can be made on the same basis in overtime weeks as in non-overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime during the workweek. Deductions that exceed this amount for articles that are not "facilities" are prohibited. There is no limit on the amount that can be deducted for qualifying deductions for "board, lodging, or other facilities." However, deductions made only in overtime weeks, or increases in prices charged for articles or services during overtime workweeks will be scrutinized to determine whether they are manipulations to evade FLSA overtime requirements.[311]

Prohibited Deductions. The FLSA prohibits an employer from making deductions for administrative or bookkeeping expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee.[312]

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[307] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10, *available at* https://www.dol.gov/whd/FOH/FOH_Ch30.pdf.

[308] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-19NA (Oct. 8, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[309] U.S. Dep't of Labor, Wage & Hour Div., Op. Ltr. FLSA2004-17NA (Oct. 6, 2004); *see also* U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

[310] 29 C.F.R. § 531.36.

[311] 29 C.F.R. § 531.37.

[312] U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK, § 30c10.

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3.7(b) *State Guidelines on Wage Payment*

3.7(b)(i) *Form of Payment Under State Law*

Authorized Instruments. Wages may be paid in cash, check, draft, or by direct deposit or payroll debit card. Paychecks must be payable on presentation at a financial institution or other established place of business without discount.[313]

Direct Deposit. Mandatory direct deposit is permitted in Michigan. With an employee's full, free, and written consent obtained without intimidation, coercion, or fear of reprisal, wages may be deposited into the employee's bank, credit union, or savings and loan association. An employee may not be required to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages through direct deposit. An employer or agent of an employer may require employees to receive wages through direct deposit if the employer has provided the employee with all of the following:

- a written form that allows the employee the option to receive wages either by direct deposit to the employee's account at a financial institution; and
- a statement indicating that, except for an employee currently paid by direct deposit, failure to return the form within 30 days with the account information necessary to implement direct deposit will be presumed to indicate consent to receiving wages through a payroll debit card.

However, for existing employees currently paid by direct deposit, the employer must obtain the employee's written consent before changing the method of payment from direct deposit to payroll debit card.[314]

As discussed further below, an employer can require employees to receive wages only through direct deposit or a payroll debit card if certain requirements are met.[315]

Payroll Debit Card. Wages may be paid by issuing a payroll debit card. An employer cannot issue a payroll debit card to an employee without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card. However, an employer paying wages by payroll debit card to one or more of its employees as of January 1, 2005 may pay wages to any of its employees by payroll debit card without obtaining their consent.[316]

An employer cannot pay wages by issuing a payroll debit card unless the card has all of the following characteristics:

- entitles the employee to make at least one withdrawal or transfer without charge each pay period, but not more frequently than once per week, for any amount the employee elects up to the balance accessible through the card;
- allows no changes in fees or terms of service unless the employee has received a written notice identifying the changes at least 21 days in advance of the date that the changes take effect;

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[313] MICH. COMP. LAWS § 408.476(1).

[314] MICH. COMP. LAWS § 408.476(2), (4), and (7).

[315] MICH. COMP. LAWS § 408.476(4).

[316] MICH. COMP. LAWS § 408.476(3).

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- provides a method for the employee to make an unlimited number of balance inquiries without charge, either electronically or by telephone; and
- is not linked to any form of credit, including a loan against future pay or a cash advance on future pay.[317]

An employer cannot require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages by direct deposit, electronic transfer, or pay card.[318]

If a payroll debit card is used, then the cardholder, not the issuer or the bank, must possess ownership of the funds. Neither the issuer nor the bank can retain a reversionary interest in the funds. The reversal of a deposit of wages made to a payroll debit card account in error is not considered reversionary when it involves any of the following:

- a credit made to the wrong employee account;
- a duplicate credit made to an employee account;
- a credit that differs from the amount in the transmittal instructions; or
- a correction.[319]

If an employer deposits wages into a pooled account accessible to an employee using a payroll debit card, the employer must maintain records of each deposit sent to the card issuer for that account showing the amount of wages deposited for each employee and the date of the deposit. In addition, each cardholder's ownership interest in the funds deposited must be indicated on records maintained by the card issuer, the depository institution's deposit account, or a third party.[320]

Requirements for Mandatory Direct Deposit or Payroll Debit Card. An employer can require employees to receive wages only through direct deposit or a payroll debit card if the employer has provided the employee with all of the following:

- a written form that allows the employee the option to receive wages either by direct deposit to the employee's account at a financial institution or through a payroll debit card;
- a statement indicating that, except for an employee currently paid by direct deposit or any employee of an employer paying wages by payroll debit card to one or more of its employees on January 1, 2005, failure to return the form within 30 days with the account information necessary to implement direct deposit will be presumed to indicate consent to receiving wages through a payroll debit card. If an employee is currently paid by direct deposit, the method of payment cannot be changed to payroll debit card without written consent of the employee; and
- written disclosure of all of the following concerning the payroll debit card:

[317] MICH. COMP. LAWS § 408.476(6).

[318] MICH. COMP. LAWS § 408.476(7).

[319] MICH. COMP. LAWS § 408.477(4).

[320] MICH. ADMIN. CODE r. 408.9035.

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- the terms and conditions for use, including an itemized list of any and all fees;
- the methods for accessing wages without charge;
- a statement that, if the payroll debit card is used outside of the specified network of ATMs, both the payroll card issuer and the operator of the ATM may impose charges;
- the methods to obtain free balance inquiries;
- the employee's right to elect to change the method of receiving wages at any time (as detailed below); and
- that the payroll debit card does not provide access to a savings or checking account.[321]

Change in Method of Payment. An employee may request a change in the method of receiving wages at any time. The employer can take no longer than one pay period to implement the change after receiving the request and any information necessary to implement the request. An employer must allow an employee to select payment by direct deposit or electronic transfer freely, without intimidation, coercion, or fear of discharge or reprisal for the choice.[322]

3.7(b)(ii) *Frequency of Payment Under State Law*

In Michigan, an employer must pay its employees as follows:

- wages earned during the first 15 days of the calendar month must be paid on or before the first calendar day of the next calendar month; and
- wages earned during the 16th day through the last day of the calendar month must be paid on or before the 15th of the next calendar month.[323]

An employer that has established a weekly or biweekly pay cycle will comply with the law provided wages are paid on regular, recurring paydays and such paydays occur on or before the 14th day following the end of the work period in which the wages are earned.[324]

An employer may establish a monthly payday if it pays its employees on or before the first day of each calendar month all wages earned during the first 15 days of the preceding calendar month, and on or before the 15th day of each calendar month the wages earned during the preceding calendar month from the 16th through the last day..[325]

In the case of overtime wages earned in December, which would have been paid after the 16th of December, an employer is deemed to comply with frequency requirements if:

1. the employees receive all wages, except overtime, on or before their regularly scheduled payday; and

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[321] MICH. COMP. LAWS § 408.476(4).

[322] MICH. COMP. LAWS § 408.476(5).

[323] MICH. COMP. LAWS § 408.472.

[324] MICH. COMP. LAWS § 408.472.

[325] MICH. COMP. LAWS § 408.472.

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2. all overtime wages earned during December are paid on or before the next regularly scheduled payday following the payday in which overtime would be paid otherwise.[326]

Special rules apply to workers harvesting crops by hand.[327]

3.7(b)(iii) *Final Payment Under State Law*

An employee who is fired or who quits must be paid as soon as the amount of final wages can be determined with due diligence. An accompanying regulation provides final wages can be paid by the next regularly scheduled payday.[328]

This rule does not apply to an employee working under contract if the amount due cannot be determined until termination of the contract. In such cases, the employer must pay all wages as nearly as they can be estimated. Final wage payment must be made in full at the termination of the contract.[329]

3.7(b)(iv) *Notification of Wage Payments & Wage Records Under State Law*

Michigan employers must furnish each employee at the time of payment of wages a statement showing:

- hours worked by the employee;
- gross wages paid;
- the pay period for which payment is being made; and
- a separate itemization of deductions.[330]

For agricultural employers, the wage statement for each hand harvester paid on a piece-work basis must also include a statement of the total number of units harvested by the employee.[331]

However, employers are not required to furnish wage statements of hours worked by:

- an employee employed in a *bona fide* executive, administrative, or professional capacity; or
- an employee employed in the capacity of academic administrative personnel or teacher in an elementary or secondary school.[332]

The law requires an employer to furnish each employee a wage statement at the time of payment, and that it be in a "retainable form," but does not further specify what form the wage statement must take. According to the state labor department, "[e]lectronic pay or wage statements are allowed, provided the

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[326] MICH. COMP. LAWS § 408.472.

[327] MICH. COMP. LAWS § 408.472.

[328] MICH. COMP. LAWS § 408.475; MICH. ADMIN. CODE r. 408.9007; Michigan Dep't of Labor and Econ. Opportunity, *Wage & Hour Division Frequently Asked Questions*, *available at* https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/frequently-asked-questions.

[329] MICH. COMP. LAWS § 408.475; MICH. ADMIN. CODE r. 408.9007; Michigan Dep't of Labor and Econ. Opportunity, *Wage & Hour Division Frequently Asked Questions*.

[330] MICH. COMP. LAWS §§ 408.417, 408.479.

[331] MICH. COMP. LAWS § 408.479.

[332] MICH. COMP. LAWS § 408.479.

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employee has the ability to print out the statement at the time the wages are paid. This manner of obtaining statements must be consistent throughout the company."[333]

3.7(b)(v) *Wage Transparency*

Michigan employers are prohibited from:

- requiring, as a condition of employment, nondisclosure by an employee of their wages;
- requiring an employee to sign a waiver or other document which purports to deny an employee the right to disclose their wages; or
- discharging, formally disciplining, or otherwise discriminating against an employee who discloses their wages.[334]

An employee alleging a violation of the wage disclosure provisions may file an administrative claim with the Department of Labor and Economic Opportunity within 12 months of the alleged violation.[335]

3.7(b)(vi) *Changing Regular Paydays or Pay Rate Under State Law*

Change in Payday. There are no general notice requirements. However, it is recommended that employees receive advance written notice before a change in payday occurs.

Changing Pay Rate. There are no general notice requirements. However, per the state labor department, employers must give employees notice about pay rate increases or decreases before a change occurs.[336]

3.7(b)(vii) *Paying for Expenses Under State Law*

In Michigan, there is no general obligation to indemnify an employee for business expenses. Further, state law contains no express provisions addressing how uniform, tool, and/or equipment expenses incurred during employment are treated in the wage payment, minimum wage, or overtime contexts.

3.7(b)(viii) *Wage Deductions Under State Law*

Permissible Deductions. An employer may make deductions from an employee's wages if:

- the deduction is required or permitted by law;
- the deduction is required or permitted by a collective bargaining agreement; or
- the employee provides written consent that was obtained without intimidation or fear of discharge for refusing to permit the deduction.[337]

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[333] MICH. COMP. LAWS § 408.479; MICH. ADMIN. CODE r. 408.9012; Michigan Dep't of Labor and Econ. Opportunity, *Wage Statements*, https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/payment-of-wages-and-fringe-benefits-act-public-act-390-of-1978/wage-statements.

[334] MICH. COMP. LAWS § 408.483a.

[335] MICH. COMP. LAWS § 408.481.

[336] Michigan Dep't of Labor and Econ. Opportunity, *Wage Rate Change*, *available at* https://www.michigan.gov/leo/bureaus-agencies/ber/Wage-and-Hour/payment-of-wages-and-fringe-benefits-act-public-act-390-of-1978/wage-rate-change.

[337] MICH. COMP. LAWS § 408.477.

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To effectuate a deduction that benefits the employer, the employee's written consent for each wage payment subject to the deduction is required. Moreover, the cumulative amount of the deductions cannot reduce the employee's gross wages below the minimum wage.[338]

Deductions may also be permitted to remedy an overpayment of wages to an employee. Within six months after making an overpayment of wages or fringe benefits paid directly to an employee, an employer can deduct the overpayment without the employee's written consent if all the following conditions are met:

- the overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits;
- the miscalculation, error, or misprint was made by the employer, the employee, or a representative of the employer or employee;
- the employer provides the employee with a written explanation of the deduction at least one pay period in advance of the wage payment affected by the deduction;
- the deduction is not more than 15% of the gross wages earned in 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; and
- the deduction does not reduce the employee's gross wages below the state or federal minimum wage, whichever is greater.[339]

Another deduction that does not require employee consent concerns repayment of amounts paid to satisfy a default judgment. If an employer pays an employee's debt under a default judgment, it can deduct that amount from the employee's regular wages without the employee's written consent if all the following conditions are met:

- the employer provides the employee a written explanation of the deduction at least one 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; and
- the deduction does not reduce the employee's gross wages below the state or federal minimum wage, whichever is greater.[340]

Finally, a nonprofit employer must obtain an employee's written consent for deductions to the nonprofit that qualify as charitable contribution under federal law, but a separate written consent for each

[338] MICH. COMP. LAWS § 408.477.

[339] MICH. COMP. LAWS § 408.477.

[340] MICH. COMP. LAWS § 408.477.

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subsequent deduction is not required. Employees can at any time rescind in writing their authorization to have charitable contributions deducted.[341]

Prohibited Deductions. Michigan law does not specify any deductions that are expressly prohibited under any circumstances. However, if an employer does not comply with the requirement to obtain advance written authorization from an employee or the deduction exceeds amounts permitted under the law, as required for certain deductions, such deductions would be noncompliant and prohibited.

3.7(b)(ix) *Wage Assignments & Wage Garnishments*

Orders of Support. A Michigan employer that receives an order requiring income withholding for child or spousal support must begin withholding from the obligor-employee's wages within seven days of receiving the order, and must remit each withholding to the appropriate state agency within three days of each payday.[342] The total amount of income withheld under all orders to withhold income for current support, past due support, fees, and health care coverage premiums effective against the employee cannot exceed 50% of the employee's disposable earnings as that term is defined under the federal Consumer Credit Protection Act.[343] The employer may deduct an administrative fee of $2 each time a payment is withheld, so long as the fees do not exceed $4 per month. Employers that remit child support payments electronically may charge a fee of $1 each time a payment is withheld, so long as the fees do not exceed $2 per month.[344]

An employer that refuses to employ, discharges, disciplines, or penalizes an employee because the employee is subject to an order of support is guilty of a misdemeanor, punishable by a fine of not more than $500.00. The employer will be required to make full restitution to the employee, including reinstatement and back pay.[345]

Debt Collection. If an employee is subject to a garnishment against their wages for collection of a debt, their employer will be served with a writ of garnishment ordering withholding of the outstanding amounts.[346] Within 14 days of being served, the employer must file a disclosure certifying that the employer will immediately begin withholding any available funds pursuant to the garnishment.[347] The writ of garnishment remains in effect until the debt has been satisfied.[348] An employer may deduct a one-time administrative fee of $35 for each writ of garnishment served.[349] An employer is prohibited from disciplining or discharging an employee because the employee's wages are subject to a writ of

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[341] MICH. COMP. LAWS § 408.477. *See, e.g.*, *Duffy v. Gainey Transp. Servs., Inc.*, 484 N.W.2d 7 (Mich. Ct. App. 1992) (employee's signed written consent authorizing weekly paycheck deductions for future damage caused by employee's negligence invalid; statute required separate written consent by employee for each paycheck from which deduction would be made).

[342] MICH. COMP. LAWS §§ 552.609, 552.611.

[343] MICH. COMP. LAWS § 552.608.

[344] MICH. COMP. LAWS § 552.623.

[345] MICH. COMP. LAWS § 552.623.

[346] MICH. COMP. LAWS § 600.4027.

[347] MICH. COMP. LAWS § 600.4012.

[348] MICH. COMP. LAWS § 600.4012.

[349] MICH. COMP. LAWS § 600.4012.

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garnishment. An employer that violates this provision will be required to reinstate the employee, if discharged, and reimburse all compensation lost as a result of the discipline or discharge.[350]

3.7(b)(x) *State Enforcement, Remedies & Penalties*

Wage Payment. The Michigan Department of Labor and Economic Opportunity enforces the state's wage payment provisions. An employee who believes that their employer has violated these laws may file a written complaint with the department within 12 months after the alleged violation. The department is empowered to investigate and resolve the complaint.[351] A prevailing employee may recover unpaid wages, exemplary damages of not more than twice the amount of unpaid wages, attorneys' fees and costs, and a penalty at the rate of 10% annually on the wages due beginning at the time the employer is notified that a complaint has been filed and ending when payment is made. The department may also assess a civil penalty of up to $1,000.[352] The wage payment provisions do not afford an employee a private right of action to file a lawsuit against an employer.

Minimum Wage & Overtime. The Department of Labor and Economic Opportunity also enforces the state's minimum wage and overtime requirements. If an employer violates these laws, an employee affected by the violation, at any time within three years of the alleged violation, may bring a civil action for the recovery of the unpaid or underpaid wages and an equal additional amount as liquidated damages together with costs and reasonable attorneys' fees as are allowed by the court.[353] Alternatively, the employee may file an administrative claim with the department, which will investigate the claim. The department is also authorized to investigate and file a civil action on behalf of all employees of that employer who are similarly situated at the same worksite and who have not brought individual civil actions.[354] An employer that fails to pay the minimum hourly wage also incurs a civil penalty of not more than $1,000.[355]

3.8 Other Benefits

3.8(a) *Vacation Pay & Similar Paid Time Off*

3.8(a)(i) *Federal Guidelines on Vacation Pay & Similar Paid Time Off*

To the extent an "employee welfare benefit plan" is established or maintained for the purpose of providing vacation benefits for participants or their beneficiaries, it may be governed under the federal Employee Retirement Income Security Act (ERISA).[356] However, an employer program of compensating employees for vacation benefits out of the employer's general assets is not considered a covered welfare benefit plan.[357] Further, the U.S. Supreme Court, in *Massachusetts v. Morash*, noted that extensive state

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[350] MICH. COMP. LAWS § 600.4015.

[351] MICH. COMP. LAWS § 408.481.

[352] MICH. COMP. LAWS § 408.488.

[353] MICH. COMP. LAWS § 408.419.

[354] MICH. COMP. LAWS § 408.419.

[355] MICH. COMP. LAWS § 408.419.

[356] 29 U.S.C. § 1002.

[357] 29 C.F.R. § 2510.3-1; *see also* U.S. Dep't of Labor, *Advisory Opinion 2004-10A* (Dec. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-10a; U.S. Dep't of Labor, *Advisory Opinion 2004-08A* (July 2, 2004), *available at* https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/advisory-opinions/2004-08a; U.S. Dep't of Labor, *Advisory Opinion 2004-03A*

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regulation of vesting, funding, and participation rights of vacation benefits may provide greater protections for employees than ERISA and, as a result, the court was reluctant to have ERISA preempt state law in situations where it was not clearly indicated.[358]

3.8(a)(ii) *State Guidelines on Vacation Pay & Similar Paid Time Off*

Michigan law does not require an employer to offer employees other benefit compensation such as vacation pay, holiday pay, personal time off, bonuses, severance pay, or pensions. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice.

In Michigan, *wages* do not include *fringe benefits*, which is defined as compensation due an employee pursuant to a written contract or written policy for holidays, time off for sickness or injury (note, however, that Michigan requires employers to provide paid sick leave), time off for personal reasons, or vacation.[359] An employer must pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy.[360]

Because vacation pay is a matter of policy or employment contract in Michigan, an employer is likely able to cap the amount of accrual to which an employee is entitled, and to impose a "use-it-or-lose-it" provision. Further, an employee's policy may require forfeiture of accrued vacation upon an employee's termination. According to the state labor department:

> if the company policy has a pay-out provision which states that unused time will be paid to you when you separate your employment, then the employer would be obligated to pay you for the unused time. The employer would not be legally obligated to pay you for unused time if the company policy does not address the issue.[361]

An employer cannot withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit.[362]

(Apr. 30, 2004), *available at* https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/advisory-opinions/2004-03a.

[358] 490 U.S. 107, 119 (1989).

[359] MICH. COMP. LAWS § 408.471.

[360] MICH. COMP. LAWS §§ 408.471, 408.473 (payment of fringe benefits), 408.474 (withholding payment of compensation due as fringe benefit to be paid at termination date).

[361] Michigan Dep't of Labor and Econ. Opportunity, *Payment of Fringe Benefits at Termination*, *available at* https://www.michigan.gov/leo/bureaus-agencies/ber/wage-and-hour/payment-of-wages-and-fringe-benefits-act-public-act-390-of-1978/payment-of-fringe-benefits-at-termination.

[362] MICH. COMP. LAWS §§ 408.471, 408.473 (payment of fringe benefits), 408.474 (withholding payment of compensation due as fringe benefit to be paid at termination date).

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3.8(b) *Holidays & Days of Rest*

3.8(b)(i) *Federal Guidelines on Holidays & Days of Rest*

There is no federal law requiring that employees be provided a day of rest each week, or be compensated at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(b)(ii) *State Guidelines on Holidays & Days of Rest*

Michigan does not require employers to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work or on holidays.

3.8(c) *Recognition of Domestic Partnerships & Civil Unions*

3.8(c)(i) *Federal Guidelines on Domestic Partnerships & Civil Unions*

Federal law does not regulate or define domestic partnerships and civil unions. States and municipalities are free to provide for domestic partnership and civil unions within their jurisdictions. Thus, whether a couple may register as domestic partners or enter into a civil union depends on their place of residence. States may also pass laws to regulate whether employee benefit plans must provide coverage for an employee's domestic partner or civil union partner.

Whether such state laws apply to an employer's benefit plans depends on whether the benefits are subject to ERISA. Most state and local laws that relate to an employer's provision of health benefit plans for employees are preempted by ERISA. Self-insured plans, for example, are preempted by ERISA. If the plan is preempted by ERISA, employers may not be required to comply with the states' directives on requiring coverage for domestic partners or parties to a civil union.[363] ERISA does not preempt state laws that regulate insurance, so employer health benefit plans that provide benefits pursuant to an insurance contract are subject to state laws requiring coverage for domestic partners or civil union partners.

The federal Comprehensive Omnibus Budget Reconciliation Act (COBRA) requires group health plans to provide continuation coverage under the plan for a specified period of time to each qualified beneficiary who would lose coverage under the plan as a result of a qualifying event (*e.g.*, the employee's death or termination from employment).[364] However, under COBRA, only an employee and the employee's spouse and dependent children are considered "qualified beneficiaries."[365] Here again, states may choose to extend continuation coverage requirements to domestic partners and civil union partners under state mini-COBRA statutes.

3.8(c)(ii) *State Guidelines on Domestic Partnerships & Civil Unions*

Couples may register as domestic partners in the cities of Detroit, Ann Arbor, Kalamazoo, and East Lansing, and in Wayne County and Washtenaw County. However, state law does not address the issue of whether an employee's domestic partner must be considered an eligible dependent for purposes of employee benefits offered by a private-sector employer.

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[363] 29 U.S.C. § 1144.

[364] 29 U.S.C. § 1161.

[365] 29 U.S.C. § 1167(3).

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3.9 Leaves of Absence

3.9(a) *Family & Medical Leave*

3.9(a)(i) *Federal Guidelines on Family & Medical Leave*

The federal Family and Medical Leave Act (FMLA) requires covered employers to provide eligible employees up to 12 weeks of unpaid leave in any 12-month period:

- for the birth or placement of a child for adoption or foster care;[366]
- to care for an immediate family member (spouse, child, or parent) with a serious health condition;[367]
- to take medical leave when the employee is unable to work because of a serious health condition;[368]
- for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on covered active duty or called to covered active duty status as a member of the National Guard, armed forces, or armed forces reserves (see **3.9(k)(i)** for information on "qualifying exigency leave" under the FMLA); and
- to care for a next of kin service member with a serious injury or illness (see **3.9(k)(i)** for information on the 26 weeks available for "military caregiver leave" under the FMLA).

A *covered employer* is engaged in commerce or in any industry or activity affecting commerce and has at least 50 employees in 20 or more workweeks in the current or preceding calendar year.[369] A *covered employee* has completed at least 12 months of employment and has worked at least 1,250 hours in the last 12 months at a location where 50 or more employees work within 75 miles of each other.[370] For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(a)(ii) *State Guidelines on Family & Medical Leave*

Michigan law does not address family and medical leave for private-sector employees.

3.9(b) *Paid Sick Leave*

3.9(b)(i) *Federal Guidelines on Paid Sick Leave*

Federal law does not require private employers (that are not government contractors) to provide employees paid sick leave. Executive Order No. 13706 requires certain federal contractors and subcontractors to provide employees with a minimum of 56 hours of paid sick leave annually, to be

[366] 29 C.F.R. §§ 825.102, 825.112, 825.113, 825.120, and 826.121.

[367] 29 C.F.R. §§ 825.102, 825.112, and 825.113; *see also* U.S. Dep't of Labor, Wage & Hour Div., *Administrator's Interpretation No. 2010-3* (June 22, 2010), *available at* https://www.dol.gov/whd/opinion/adminIntrprtn/FMLA/2010/FMLAAI2010_3.pdf (guidance on who may take time off to care for a sick, newly-born, or adopted child when the employee has no legal or biological attachment to the child).

[368] 29 C.F.R. §§ 825.112, 825.113.

[369] 29 U.S.C. § 2611(4); 29 C.F.R. §§ 825.104 to 825.109.

[370] 29 U.S.C. § 2611(2); 29 C.F.R. §§ 825.110 to 825.111.

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accrued at a rate of at least one hour of paid sick leave for every 30 hours worked.[371] The paid sick leave requirement applies to certain contracts solicited—or renewed, extended, or amended—on or after January 1, 2017, including all contracts and subcontracts of any tier thereunder. For more information on this topic, see **LITTLER ON GOVERNMENT CONTRACTORS & EQUAL EMPLOYMENT OPPORTUNITY OBLIGATIONS**.

3.9(b)(ii) *State Guidelines on Paid Sick Leave*

On July 31, 2024, the Michigan Supreme Court, in a 4-to-3 decision, found unconstitutional amendments that significantly revised minimum wage, tip, and paid sick leave standards. For background, in September 2018, rather than have voters decide the issue, Michigan adopted as law a proposed ballot measure, the Earned Sick Time Act (ESTA). However, a few months later, in December 2018 during a lame duck session, Michigan enacted two bills that substantively changed the Act and renamed the ESTA the Paid Medical Leave Act (PMLA). Legal challenges followed.

In July 2022, a Michigan Court of Claims judge held that the maneuver violated the Michigan Constitution. Then, in January 2023, a three-judge panel of the Michigan Court of Appeals reversed the lower court's decision and upheld the amendments. After years of litigation, and almost six years after the ESTA was originally adopted and enacted, the state supreme court voided the amendments and will the ESTA, on February 21, 2025, as it was written originally.

Directly below we summarize the ESTA, effective February 21, 2025, and after that summarize the PMLA as it existed from March 29, 2019 until the state supreme court's decision. We continue to include the PMLA summary because questions remain concerning what happens to leave that employees received when the PMLA was in effect and what leave rights and responsibilities, if any, exist during the interim period before the ESTA takes effect in 2025.

The ESTA summary relies exclusively on the statute, though clarification may be forthcoming on some issues once the Michigan Department of Labor & Economic Opportunity weighs in on the impact of the state supreme court decision, and issues informal guidance and/or formal rulemaking.

Michigan's Earned Sick Time Act will take effect on February 21, 2025.[372]

Covered Employers & Employees: The law applies to all private employers are covered, but different standards apply to employers with 9 or fewer employees that do not maintain 10 or more employees on its payroll during 20 or more calendar workweeks in the current or preceding calendar year. To calculate business size, employers must count all individuals performing work for compensation on a full-time, part-time, or temporary basis, including individuals made available to work through the services of a temporary services or staffing agency or similar entity. Covered employees include individuals engaged in service to an employer in the business of the employer in Michigan. Generally, there are no exceptions, though there will be a temporally limited exception for employees covered by a collective bargaining agreement (CBA) in effect on February 21, 2025; in that case, the law applies beginning on the stated expiration date in the CBA, notwithstanding any statement in the agreement that it continues in force until a future date or event or the execution of a CBA.

Covered Relations: Employees can use leave for personal reasons or to care for or assist a family member, which includes a child, grandchild, grandparent, parent, sibling, or spouse. Additionally, a family member

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[371] 80 Fed. Reg. 54,697-54,700 (Sept. 10, 2015).

[372] MICH. COMP. LAWS §§ 408.961 *et seq*.

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includes an individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

Accrual & Carry-Over: An employer complies with the law if it provides paid leave – which includes but is not limited to paid vacation days, personal days, and paid time off – in at least the same amounts as the law requires that may be used for the same purposes and under the same conditions provided in the law and that is accrued at a rate equal to or greater than the rate described in the law. Additionally, for small employers, employees must be able to use paid earned sick time before using unpaid earned sick time. Otherwise, eligible employees begin accruing leave when employment begins or when the law takes effect, whichever is later. Generally, employees must accrue one leave hour for every 30 hours worked. However, the law assumes exempt executive, administrative, professional, or outside sales employees work 40 hours in each workweek unless their normal work week is less than 40 hours, in which case they accrue sick time based upon their normal workweek. The law is silent on whether employers can cap accrual on an annual basis, or overall. Similarly, the law does not contain a hard number when it comes to carryover of unused leave. Instead, it simply requires that leave carry over from year to year. Additionally, the law is silent on whether employers can avoid carryover requirements by annually frontloading a specific amount of leave.

Covered Purposes & Using Leave: Leave can be taken for the following "sick" time purposes: mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of mental or physical illness, injury, or health condition; and preventative medical care. If an employee or family member is a victim of domestic violence or sexual assault, leave can be used for the following "safe" time purposes: medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate; to obtain legal services; and to participate in civil or criminal proceedings. Finally, leave can be used for "other" purposes as well: meetings at a child's school or place of care related to the child's health or disability, or the effects of domestic violence or sexual assault on the child; closure of an employee's primary workplace, or a child's school or place of care, by order of a public official due to a public health emergency; and when health authorities or a health care provider determines an employee's or family member's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease, whether or not individual actually contracted the communicable disease.

Leave may be used as it is accrued, but employers can require employees to wait until the 90th calendar day after employment begins to use leave. Leave may be used in the smaller of hourly increments or the smallest increment that the employer's payroll system uses to account for absences or use of other time. Employees of small employers are not entitled to use more than 40 hours of paid leave in a year unless their employer allows it. If they accrue more than 40 hours of sick time in a year, or carry over leave, they are entitled in a year to use an additional 32 hours of unpaid sick time unless their employers allows greater use. Employees of other employers, however, regardless of the amount of leave they may carry over, are not entitled to use more than 72 hours of paid sick time in a year unless their employer permits them to use more leave annually.

If the need for leave is foreseeable, an employer may require an employee to provide advance notice of their intent to use sick time, not to exceed 7 days before the date leave will begin. However, if it is unforeseeable, an employer may require an employee to give notice as soon as practicable.

For use of leave on four or more consecutive days, an employer may require reasonable documentation that the leave has been used for a covered reason. Reasonable documentation includes, for sick time

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purposes, documentation signed by a health care professional indicating that leave is necessary. For safe time purposes, the following types of documentation selected by the employee are considered reasonable: a police report indicating that the employee or family member was a victim of domestic violence or sexual assault; a signed statement from a victim and witness advocate affirming that the employee or family member is receiving services from a victim services organization; a court document indicating that the employee or family member is involved in legal action related to domestic violence or sexual assault. An employer cannot require disclosure of details relating to domestic violence or sexual assault or the details of an employee's or covered relation's medical condition as a condition of providing leave, delay the commencement of leave because it has not yet received documentation, or require that the documentation explain the nature of the illness or details of the violence. If an employer requires documentation to support an absence, it must paying for all out-of-pocket expenses the employee incurs in so obtaining. Moreover, even if an employee has health insurance, the employer must pay any costs a health care provider charges an employee to provide the specific documentation the employer requires. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or covered relation, it must treat that information as confidential and cannot disclose that information except to the affected employee or with the employee's permission.

Payment When Leave Is Used: Leave must be paid at the employee's normal hourly wage or the state minimum wage, whichever is greater. For employees whose hourly wage varies depending on the work performed, that normal hourly wage is the employee's average hourly wage in the pay period immediately before the pay period in which the employee uses leave.

Notice, Posting & Recordkeeping Requirements: An employer must provide written notice to each employee at the time of hiring or by February 21, 2025 – whichever is later – that includes the following information: the amount of leave the law requires the employer to provide; the employer's year for compliance purposes; terms under which employees may use leave; that the law prohibits retaliation against an employee for requesting or using leave; and that the employee has a right to file a lawsuit or a complaint with the state labor department for any violation of the law. Additionally, a poster must be conspicuously displayed at the employer's place of business in a place that is accessible to employees that contains all the information in the notice. The notice and poster must be in English, Spanish, and any language that is the first language spoken by at least 10% of the employer's workforce if the state labor department provides a translation in that language.

For at least three years, an employer must keep records documenting hours worked and leave taken by employees.

Prohibitions: A contract or agreement between an employer and employee or acceptance by the employee of a paid or unpaid leave policy that provides fewer rights or benefits than provided by the law is void and unenforceable. An employer cannot require an employee to search for or secure a replacement worker as a condition for using earned sick time. Additionally, an employer or any other person cannot interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right protected under the law, and an employer cannot take retaliatory personnel action or discriminate against an employee because the employee has exercised a right protected under the law. There is a rebuttable presumption of retaliation if an employer takes adverse action against an employee within 90 days after that person exercised their protected rights under the law. Both the anti-interference and anti-retaliation protections apply to a person who mistakenly but in good faith alleges a violation of the law. Under the law, an employer's absence control policy cannot treat leave taken under the law as an absence that may lead to or result in retaliatory personnel action.

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End of Employment: When employment ends, an employer is not required to payout the monetary value of an employee's unused leave. If an employee is rehired within six months of separation, an employer must reinstate previously accrued unused leave and permit the reinstated employee to use that leave and accrue additional leave.

Enforcement: The Department of Labor and Economic Opportunity enforces the law. Administrative complaints or civil lawsuits must be filed within three years after the violation or the date when the employee knew of the violation, whichever is later. The state labor department may assess penalties, along with civil fines of up to $1,000 for retaliation and/or failure to provide leave violations and up to $100 for each willful notice or posting violation. Additionally, if they prevails, employees can receive appropriate relief, which includes but is not limited to: payment for used leave or leave improperly withheld; rehiring or reinstatement; back wages; reestablishment of benefits to which the employee otherwise would have been eligible if they had not been subjected to retaliation or discrimination; an equal additional amount as liquidated damages; costs and reasonable attorney fees; and any and all damages incurred.

Michigan's Paid Medical Leave Act originally took effect on March 29, 2019 and was voided by the state supreme court.[373]

Covered Employers & Employees: The law applies to employers that employ 50 or more individuals. Per the state labor department, employers must count all individuals that work in the United States, regardless of full- or part-time status or how many hours they work.[374] Covered employees include individuals engaged in service to an employer in the business of the employer and for whom an employer is required to withhold for federal income tax purposes. However, there are numerous exceptions, *e.g.*, exempt executive, administrative, professional, or outside sales employees, individuals whose primary work location is not in Michigan, individuals covered by a collective bargaining agreement that is in effect, individuals that are employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer, and individuals who worked on average fewer than 25 hours per week during the immediately preceding calendar year. Exceptions might also exist for employers and employees covered by the federal Railway Labor Act or Railroad Unemployment Insurance Act. There are other exceptions for certain temporary help firm employees, variable-hour employees, and trainee employees that are younger than 20 years old.

Covered Relations: Employees can use leave for personal reasons or to care for or assist a family member, which includes a child, grandchild, grandparent, parent, sibling, or spouse.

Accrual & Carry-Over: There is a rebuttable presumption of compliance if each benefit year an employer provides at least 40 hours of paid leave, which includes, but is not limited to, paid vacation days, paid personal days, and paid time off. Otherwise, eligible employees begin accruing leave when employment begins. Employees must accrue one leave hour for every 35 hours worked, though accrual of more than one hour per calendar week is not required. Employers may limit accrual to 40 leave hours per year. Employers are not required to allow employees to carry over of more than 40 leave hours from one benefit

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[373] MICH. COMP. LAWS §§ 408.961 *et seq*.

[374] Michigan Dep't of Labor and Econ. Opportunity, The Paid Medical Leave Act Public Act 338 of 2018, as amended by Public Act 369 of 2018 Frequently Asked Questions (FAQs), *available at* https://www.michigan.gov/-/media/Project/Websites/leo/Documents/WAGE-HOUR/Paid_Medical_Leave_Act_FAQ_english.pdf?rev=a89e3a672b9c4cad8f40c71382a7a186.

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year to another benefit year. However, if at the beginning of each benefit year an employer provides an employee at least 40 leave hours, carry-over is not required.

Covered Purposes & Using Leave: Leave can be taken for the following "sick" time purposes: mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of mental or physical illness, injury, or health condition; and preventative medical care. If an employee or family member is a victim of domestic violence or sexual assault, leave can be used for the following "safe" time purposes: medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate; to obtain legal services; and to participate in civil or criminal proceedings. Finally, leave can be used for "other" purposes as well: closure of an employee's primary workplace, or a child's school or place of care, by order of a public official due to a public health emergency; and when health authorities or a health care provider determines an employee's or family member's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease, whether or not individual actually contracted the communicable disease.

Leave may be used as it is accrued, but employers can require employees to wait until the 90th calendar day after employment begins to use leave. Leave must be used in one-hour increments unless an employer has a different increment policy written in an employee handbook or other employee benefits document. An employer is not required to permit employees to use more than 40 leave hours in a year.

Employees must comply with an employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employee's failure to comply with these requirements can result in discipline or discharge. An employee must be given at least three days to provide documentation to an employer.

Payment When Leave Is Used: Leave must be paid at the employee's normal hourly or base wage or the state minimum wage, whichever is greater. Employers can exclude the following when calculating an employee's pay rate: overtime pay; holiday pay; bonuses; commissions; supplemental pay; piece-rate pay; gratuities.

Posting & Recordkeeping Requirements: A poster must be conspicuously displayed at the employer's place of business in a place that is accessible to employees that contains all the following information: the amount of leave the law requires to be provided to an employee; the terms under which leave may be used; and an employee's right to file a complaint with the state labor department concerning a violation. For not less than one year, an employer must keep records documenting hours worked and leave taken by employees.

Prohibitions: As a condition of providing leave, an employer cannot require an employee to disclose details relating to domestic violence or sexual assault, or details of an employee's or family member's medical condition. Additionally, an employer cannot require that an employee's documentation explain the details of domestic violence or sexual assault. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or family member, it must treat that information as confidential and cannot disclose it except to the affected employee or with the affected employee's permission.

End of Employment: When employment ends, an employer is not required to payout the monetary value of an employee's unused leave. If an employee is later rehired, an employer is not required to reinstate previously unused leave.

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Enforcement: The Department of Labor and Economic Opportunity enforces the law, which does not allow employees to file a lawsuit. Complaints must be filed with the department within six months after a violation occurred. The department may award an employee damages for leave improperly withheld. Employers that fail to provide leave are subject to an administrative fine of not more than $1,000, and those that willfully violate the posting requirement are subject to an administrative fine of not more than $100 for each violation.

3.9(c) *Pregnancy Leave*

3.9(c)(i) *Federal Guidelines on Pregnancy Leave*

Three federal statutes are generally implicated when handling leave related to pregnancy: the Pregnancy Discrimination Act, which amended Title VII of the Civil Rights Act of 1964 ("Title VII") in 1978; the Family and Medical Leave Act; and the Americans with Disabilities Act. For additional information, see LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES.

Pregnancy Discrimination Act (PDA). Under the PDA, which as part of Title VII applies to employers with 15 or more employees, disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions must be treated the same as disabilities caused or contributed to by other medical conditions under an employer's health or disability insurance or sick leave plan.[375] Policies and practices involving such matters as the commencement and duration of leave, the availability of extensions, reinstatement, and payment under any health or disability insurance or sick leave plan must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms as they are applied to other disabilities.

An employer must allow employees with physical limitations resulting from pregnancy to take leave on the same terms and conditions as others who are similar in their ability or inability to work. However, an employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform their job. Moreover, an employer may not prohibit employees from returning to work for a set length of time after childbirth. Thus, employers must hold open a job for a pregnancy-related absence for the same length of time as jobs are held open for employees on sick or disability leave.

Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for the employee own serious health condition, such as severe morning sickness.[376] FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave (as opposed to leave taken on an intermittent or reduced schedule) is subject to the employer's approval.

Americans with Disabilities Act (ADA). Pregnancy-related impairments may constitute disabilities for purposes of the ADA. The federal Equal Employment Opportunity Commission (EEOC) takes the position that leave is a reasonable accommodation for pregnancy-related impairments, and may be granted in addition to what an employer would normally provide under a sick leave policy for reasons related to the

[375] 42 U.S.C. § 2000e(k); *see also* 29 C.F.R. § 1604.10.

[376] 29 C.F.R. § 825.202.

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impairment.[377] An employee may also be allowed to take leave beyond the maximum FMLA leave if the additional leave would be considered a reasonable accommodation.

Several states provide greater protections for employees with respect to pregnancy. For example, states may have specific laws prohibiting discrimination based on pregnancy or providing separate protections for pregnant individuals, including the requirement that employers provide reasonable accommodations to pregnant employees to enable them to continue working during their pregnancies, provided that no undue hardship on the employer's business operations would result. These protections are discussed in **3.11(c)**. To the extent that a state law focuses primarily on providing job-protected leave for employees with disabling pregnancy-related health conditions, that state law is discussed below.

3.9(c)(ii) *State Guidelines on Pregnancy Leave*

In Michigan, the denial of disability benefits for pregnancy-related disabilities is unlawful. Employers with one or more employees are prohibited from discriminating against a person on the basis of pregnancy with respect to any term, condition or privilege of employment, including a benefit plan or system.[378]

3.9(d) *Adoptive Parents Leave*

3.9(d)(i) *Federal Guidelines on Adoptive Parents Leave*

An eligible employee may take time off to care for a newly-adopted child as part of the employee's leave entitlement under the FMLA. For information on the FMLA, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.9(d)(ii) *State Guidelines on Adoptive Parents Leave*

Michigan law does not address adoptive parents leave for private-sector employees.

3.9(e) *School Activities Leave*

3.9(e)(i) *Federal Guidelines on School Activities Leave*

Federal law does not address school activities leave for private-sector employees.

3.9(e)(ii) *State Guidelines on School Activities Leave*

Michigan law does not address school activities leave for private-sector employees.

3.9(f) *Blood, Organ, or Bone Marrow Donation Leave*

3.9(f)(i) *Federal Guidelines on Blood, Organ, or Bone Marrow Donation*

Federal law does not address blood, organ, or bone marrow donation leave for private-sector employees.

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[377] EEOC, Notice 915.003, *EEOC Enforcement Guidance on Pregnancy Discrimination and Related Issues* (June 25, 2015), *available at* https://www.eeoc.gov/laws/guidance/pregnancy_guidance.cfm; *see also* EEOC, *Facts About Pregnancy Discrimination* (Sept. 8, 2008), *available at* https://www.eeoc.gov//facts/fs-preg.html.

[378] MICH. COMP. LAWS §§ 37.2201, 2202; *Bully v. General Motors Corp.*, 328 N.W.2d 24 (Mich. Ct. App. 1982) (denial of long-term disability benefits only for pregnancy-related disabilities constitutes sex discrimination).

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3.9(f)(ii) *State Guidelines on Blood, Organ, or Bone Marrow Donation*

Michigan law does not address blood, organ, or bone marrow donation leave for private-sector employees.

3.9(g) *Voting Time*

3.9(g)(i) *Federal Voting Time Guidelines*

There is no federal law concerning time off to vote.

3.9(g)(ii) *State Voting Time Guidelines*

Michigan law does not address time off to vote for private-sector employees.

3.9(h) *Leave to Participate in Political Activities*

3.9(h)(i) *Federal Guidelines on Leave to Participate in Political Activities*

Federal law does not address leave for private-sector employees to participate in political activities.

3.9(h)(ii) *State Guidelines on Leave to Participate in Political Activities*

Michigan law does not address leave for private-sector employees to participate in political activities.

3.9(i) *Leave to Participate in Judicial Proceedings*

3.9(i)(i) *Federal Guidelines on Leave to Participate in Judicial Proceedings*

The Jury System Improvements Act prohibits employers from terminating or disciplining "permanent" employees due to their jury service in federal court.[379] Employers are under no federal statutory obligation to pay employees while serving on a jury.

Employers may verify that an employee's request for civic duty is legally obligated by requiring the employee to produce a copy of the summons, subpoena, or other documentation. Also, an employer can set reasonable advance notice requirements for jury duty leave. Upon completion of jury duty, an employee is entitled to reinstatement.

An employer also may be required to grant leave to employees who are summoned to testify, to assist, or to participate in hearings conducted by federal administrative agencies, as required by a variety of additional federal statutes.[380] For more information, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

3.9(i)(ii) *State Guidelines on Leave to Participate in Judicial Proceedings*

Leave to Serve on a Jury. Michigan employers must not discharge, discipline, or threaten to discharge or discipline, an employee because the employee is summoned for jury duty, serves on a jury, or has served on a jury.[381] An employer may not require an employee to work on a day when the employee is serving on a jury, if the number of hours worked added to the number jury service hours that day exceeds the

[379] 28 U.S.C. § 1875.

[380] *See, e.g.*, 29 U.S.C. § 660(c) (Occupational Safety and Health Act); 29 U.S.C. § 215(a)(3) (Fair Labor Standards Act); 42 U.S.C. § 2000e 3(a) (Title VII); 29 U.S.C. § 623(d) (Age Discrimination in Employment Act).

[381] MICH. COMP. LAWS § 600.1348.

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hours normally worked by the employee. However, the employee may voluntarily agree to work the hours or if it is provided for in a collective bargaining agreement. Employers are not required to compensate an employee for time spent on jury service.[382]

3.9(j) *Leave for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

3.9(j)(i) *Federal Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Federal law does not address leave for private-sector employees who are victims of crime or domestic violence.

3.9(j)(ii) *State Guidelines on Leaves for Victims of Domestic Violence, Sexual Assault, Stalking, or Victims of Crime*

Victims of Crimes in General. An employee is eligible for time off if:

- the employee suffered direct or threatened physical, financial, or emotional harm as a result of the commission of a crime;
- the victim of the crime is deceased and the employee is:
  - the victim's spouse;
  - the victim's child who is 18 years of age or older;
  - the victim's parent;
  - the guardian or custodian of the victim's child if the child is under 18 years of age;
  - the victim's sibling; or
  - the victim's grandparent;
- the victim is under age 18 and the employee is the victim's parent, guardian, or custodian (but not the defendant or incarcerated);
- the victim is mentally or emotionally unable to participate in the legal process and the employee is the victim's parent, guardian, or custodian (but not the defendant or incarcerated); or
- the victim is physically or emotionally unable to exercise their legal rights as a crime victim and the employee is the victim's designated representative as their spouse, child (18 years of age or older), parent, sibling, grandparent, or person 18 years of age or older who is neither the defendant nor incarcerated.[383]

An employee who is a defendant in the criminal proceedings or is incarcerated is not eligible for time off. In addition, an employee who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible for time off.[384]

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[382] MICH. COMP. LAWS § 600.1348.

[383] MICH. COMP. LAWS §§ 780.752, 780.781, 780.811, 780.822, and 780.790.

[384] MICH. COMP. LAWS §§ 780.752, 780.781, 780.811, 780.822, and 780.790.

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An eligible employee may take time off from work to: (1) respond to a subpoena or request by the prosecuting attorney to serve as a witness; or (2) attend court during the employee's or another victim's testimony.[385]

There is no requirement that the employee be compensated for absences taken pursuant to the statute. An employer or employer's agent who threatens to discharge or discipline or discharges or disciplines a victim or victim representative is guilty of a misdemeanor and subject to imprisonment of up to 90 days and a fine of up to $500.[386]

3.9(k) *Military-Related Leave*

3.9(k)(i) *Federal Guidelines on Military-Related Leave*

Two federal statutes primarily govern military-related leave: the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Family and Medical Leave Act (FMLA). For more detailed information on these statutes, including notice and other requirements, see **LITTLER ON LEAVES OF ABSENCE: MILITARY & CIVIC DUTY LEAVES**.

USERRA. USERRA imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." USERRA also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify those employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things.

Some states provide greater protections for employees with respect to military leave. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Any state law that seeks to supersede, nullify, or diminish these rights is void under USERRA.[387]

FMLA. Under the FMLA, eligible employees may take leave for: (1) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (2) to care for a next of kin servicemember with a serious injury or illness (referred to as "military caregiver leave").

1. **Qualifying Exigency Leave.** An eligible employee may take up to 12 weeks of unpaid leave in a single 12-month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists.[388]

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[385] MICH. COMP. LAWS §§ 780.762, 780.822, and 780.790.

[386] MICH. COMP. LAWS § 780.822.

[387] USERRA provides that: (1) nothing within USERRA is intended to supersede, nullify, or diminish a right or benefit provided to an employee that is greater than the rights USERRA provides (38 U.S.C. § 4302(a)); and (2) USERRA supersedes any state law that would reduce, limit, or eliminate any right or benefit USERRA provides (38 U.S.C. § 4302(b)).

[388] 29 C.F.R. § 825.126(a).

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An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country.389 Notably, leave is only available for covered relatives of military members called to active federal service by the president and is not available for those in the armed forces recalled to state service by the governor of the member's respective state.

2. **Military Caregiver Leave.** An eligible employee may take up to 26 weeks of unpaid leave in a single 12-month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin.

3.9(k)(ii) *State Guidelines on Military-Related Leave*

Military Service. Employers are prohibited from discharging or otherwise discriminating against an employee because of membership or service in the military or naval forces of Michigan or any other state. State law also explicitly prohibits an employer from preventing employees from performing military service; attending any military encampment, drill, or instruction; or dissuading any person from enlisting or accepting a commission in the National Guard or naval militia by threatening the person's employment.[390]

Employees who are members of the state or U.S. naval or military forces are entitled to take a leave of absence for the purpose of being inducted into or entering into active service, active state service, or the service of the United States, for the purpose of determining their physical fitness to enter the service, or for performing service as an officer or enlisted member of the military or naval forces of this state, any other state, or the United States in active state service.[391]

Employees must provide advance notice for a period of leave for military service. The statute does not define *advance notice*.[392]

Reinstatement. Following honorable release from service, training duty, or rejection, the employee must be reinstated, as long as the employee applies for reemployment within 45 days of the completion of service, or if service was for more than 180 days, then within 90 days following release. When returning such an employee to work, employers must abide by the following order of priority:

- if service lasted 90 days or less, and if the employee remains qualified to perform the associated duties, the employee must be reemployed in the position the employee would have held if their continuous employment had not been interrupted by military service—including any promotion;
- if service lasted 90 days or less, and if the employee is not qualified to perform the duties associated with the position mentioned above, and if the employer has made reasonable efforts to qualify the employee for such position, the employee must be reinstated to the

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[389] Deployment of the member with the armed forces to a foreign country means deployment to areas outside of the United States, the District of Columbia, or any Territory or possession of the United States, including international waters. 29 C.F.R. § 825.126(a)(3).

[390] MICH. COMP. LAWS § 32.272.

[391] MICH. COMP. LAWS § 408.921.

[392] MICH. COMP. LAWS § 32.273.

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employee's former position (that is, the position held at the time military service commenced);

- if service lasted 91 days or more, the employee must be reemployed in in either of the above described positions. If the employee is not or cannot become qualified to perform the above positions, they may be placed in a position that is the nearest approximation in status and pay to either the position they would have held without interruption in employment or the position the employee held before leaving.[393]

Exceptions to Reinstatement. An employee is not entitled to reemployment if the employee was absent for an uninterrupted period of service that exceeds five years. *Period of service* does not include all service time, however. For example, when calculating the period of service, time is excluded beyond five years if required to complete an initial period of obligated service. Time is also excluded if the employee is ordered to or retained on active duty under certain federal statutes or because of war or national or state emergency. Numerous exceptions are set forth in the Michigan statute.[394]

Additionally, an employee is not entitled to reemployment if the employee's military service is terminated under certain circumstances, such as a dishonorable discharge or dropping from the rolls.[395]

Employment Benefits. A reinstated employee is entitled to the seniority and other seniority-based rights and benefits the person had on the date the person left for service, plus the additional seniority, rights, and benefits the person would have attained if the person had been continually employed. In addition, the employee is entitled to all nonseniority based rights and benefits the employer provides to other similarly situated employees who are on furlough or leave of absence.[396]

Other Military-Related Protections: Civil Air Patrol. Michigan also offers certain job protections to members of the civil air patrol, which is the civilian auxiliary of the U.S. Air Force. Similar to the requirements for those in military service, employers must not discriminate against, discipline, or discharge an employee due to the employee's membership in the civil air patrol or because the employee is absent from work for the purpose of responding as a member of the civil air patrol to an emergency declared by the governor or the President of the United States.[397]

Employees who are members of the civil air patrol and are trained and qualified to provide emergency services are entitled to protected leave for the purpose of responding to an emergency declared by the governor or the president of the United States.[398]

To be entitled to take leave, the employee must inform their employer that the employee is a member of the civil air patrol and may be called to provide emergency services. This notice must be furnished within 30 days of the start of employment or the date the employee joined the civil air patrol, whichever is latest. If called to duty, the employee must give their employer as much notice as possible of the dates the employee will be absent to serve with the civil air patrol during the emergency. The employee must also

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[393] MICH. COMP. LAWS § 32.273(1).

[394] MICH. COMP. LAWS § 32.273(4).

[395] MICH. COMP. LAWS § 32.273(5).

[396] MICH. COMP. LAWS § 32.273.

[397] MICH. COMP. LAWS § 32.272.

[398] MICH. COMP. LAWS § 408.921.

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provide the employer with verification from the civil air patrol of the emergency need for the employee's volunteer service.[399]

An employer may treat an absence due to civil air patrol service as unpaid time off. The statute does not prohibit an employer from complying with a collective bargaining agreement or employee benefit plan entered into prior to the date of enactment.[400]

Other Military-Related Protections: Spousal Unemployment. Although not a specific leave requirement, employees who leave employment to accompany a spouse who has been reassigned from one military assignment to another may be eligible for unemployment benefits.[401]

3.9(l) *Other Leaves*

3.9(l)(i) *Federal Guidelines on Other Leaves*

There are no federal statutory requirements for other categories of leave for private-sector employees.

3.9(l)(ii) *State Guidelines on Other Leaves*

There are no statutory requirements for other categories of leave for private-sector employees in Michigan.

3.10 Workplace Safety

3.10(a) *Occupational Safety and Health*

3.10(a)(i) *Fed-OSH Act Guidelines*

The federal Occupational Safety and Health Act ("Fed-OSH Act") requires every employer to keep their places of employment safe and free from recognized hazards likely to cause death or serious harm to employees.[402] Employers are also required to comply with all applicable occupational safety and health standards.[403] To enforce these standards, the federal Occupational Safety and Health Administration ("Fed-OSHA") is authorized to carry out workplace inspections and investigations and to issue citations and assess penalties. The Fed-OSH Act also requires employers to adopt reporting and record-keeping requirements related to workplace accidents. For more information on this topic, see LITTLER ON WORKPLACE SAFETY.

Note that the Fed-OSH Act encourages states to enact their own state safety and health plans. Among the criteria for state plan approval is the requirement that the state plan provide for the development and enforcement of state standards that are at least as effective in providing workplace protection as are

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[399] MICH. COMP. LAWS § 408.921.

[400] MICH. COMP. LAWS § 408.921.

[401] MICH. COMP. LAWS § 421.29(1)(a)(ii).

[402] 29 U.S.C. § 654(a)(1). An *employer* is defined as "a person engaged in a business affecting commerce that has employees." 29 U.S.C. § 652(5). The definition of employer does not include federal or state agencies (except for the U.S. House of Representatives and Senate). Under some state plans, however, state agencies may be subject to the state safety and health plan.

[403] 29 U.S.C. § 654(a)(2).

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comparable standards under the federal law.[404] Some state plans, however, are more comprehensive than the federal program or otherwise differ from the Fed-OSH Act.

3.10(a)(ii) *State-OSH Act Guidelines*

Michigan, under agreement with Fed-OSHA, operates its own state occupational safety and health program in accordance with section 18 of the Fed-OSH Act.[405] Thus, Michigan is a so-called "state plan" jurisdiction, with its own detailed rules for occupational safety and health that parallel, but are separate from, Fed-OSHA standards.[406] The Michigan Occupational Safety & Health Administration (MIOSHA) is the state government agency that regulates workplace safety and health in Michigan. Michigan's occupational safety and health plan covers both private and public employers.[407]

3.10(b) *Cell Phone & Texting While Driving Prohibitions*

3.10(b)(i) *Federal Guidelines on Cell Phone & Texting While Driving*

Federal law does not address cell phone use or texting while driving.

3.10(b)(ii) *State Guidelines on Cell Phone & Texting While Driving*

A driver may not operate a motor vehicle while reading, manually typing, or sending a text message on a wireless two-way communication device that is located in the person's hand or lap.[408] A *device* includes a wireless two-way communication device, including a wireless telephone used in cellular telephone service or personal communication service. The use of a mobile electronic device in a voice-operated or hands-free mode is permitted if the driver does not use their hands to operate the device, except to use a single button press, tap or swipe to use a function of the device, or if the mobile electronic device is integrated into the motor vehicle and utilizes the user interfaces that a permanently installed in the vehicle. In addition, the use of a mobile device for the sole purpose of continuously recording or broadcasting video inside or outside of a vehicle is permitted.

The prohibition against texting applies to employees driving for work purposes and could expose an employer to liability. Employers therefore should be cognizant of, and encourage compliance with, the state restriction. However, the prohibitions do not apply to law enforcement officers, firefighters, emergency medical technicians, paramedics, operators of authorized emergency vehicles, or similarly engaged paid or volunteer public safety first responders performing their duty. Public utility employees or contractors acting within the scope of their duties responding to a public utility emergency are also excluded from the prohibitions.

3.10(c) *Firearms in the Workplace*

3.10(c)(i) *Federal Guidelines on Firearms on Employer Property*

Federal law does not address firearms in the workplace.

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[404] 29 U.S.C. § 667(c)(2).

[405] 29 U.S.C. § 667.

[406] MICH. COMP. LAWS §§ 408.1001 *et seq.*

[407] MICH. COMP. LAWS §§ 408.1002, 408.1005.

[408] MICH. COMP. LAWS § 257.602b.

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3.10(c)(ii) *State Guidelines on Firearms on Employer Property*

An employer may *not* prohibit an employee with a concealed weapon license from carrying a concealed firearm in the workplace or parking lot areas, but an employer may prohibit an employee from carrying a concealed firearm during the course of the employee's employment with that employer.[409] The firearm may be carried in the trunk or passenger compartment of a vehicle without a trunk if it is unloaded, stored in a closed case designed for the storage of firearms, and not readily accessible.[410]

3.10(d) *Smoking in the Workplace*

3.10(d)(i) *Federal Guidelines on Smoking in the Workplace*

Federal law does not address smoking in the workplace.

3.10(d)(ii) *State Guidelines on Smoking in the Workplace*

Smoking is prohibited in enclosed places of employment in Michigan.[411] "No smoking" signs must be posted at entrances, inside buildings, and in any other area where smoking is prohibited. Additionally, ash trays must be removed from all no smoking areas.[412]

Antiretaliation Provisions. Employers may not take any retaliatory or adverse personnel action against an employee for asserting their rights under the smoking law.[413]

3.10(e) *Suitable Seating for Employees*

3.10(e)(i) *Federal Guidelines on Suitable Seating for Employees*

Federal law does not address suitable seating requirements for employees.

3.10(e)(ii) *State Guidelines on Suitable Seating for Employees*

Michigan law does not address suitable seating requirements for employees.

3.10(f) *Workplace Violence Protection Orders*

3.10(f)(i) *Federal Guidelines on Workplace Violence Protection Orders*

Federal law does not address employer workplace violence protection orders. That is, there is no federal statute addressing whether or how employers might obtain a legal order (such as a temporary restraining order) on their own behalf, or on behalf of their employees or visitors, to protect against workplace violence, threats, or harassment.

3.10(f)(ii) *State Guidelines on Workplace Violence Protection Orders*

Michigan law does not address employer workplace violence protection orders.

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[409] MICH. COMP. LAWS §§ 28.425n, 750.231a.

[410] MICH. COMP. LAWS §§ 28.425n, 750.231a.

[411] MICH. COMP. LAWS §§ 333.12601 *et seq*.

[412] MICH. COMP. LAWS § 333.12603.

[413] MICH. COMP. LAWS § 333.12606.

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3.11 Discrimination, Retaliation & Harassment

3.11(a) *Protected Classes & Other Fair Employment Practices Protections*

3.11(a)(i) *Federal FEP Protections*

The federal equal employment opportunity laws that apply to most employers include: (1) Title VII of the Civil Rights Act of 1964 ("Title VII");[414] (2) the Americans with Disabilities Act (ADA);[415] (3) the Age Discrimination in Employment Act (ADEA);[416] (4) the Equal Pay Act;[417] (5) the Genetic Information Nondiscrimination Act of 2009 (GINA);[418] (6) the Civil Rights Acts of 1866 and 1871;[419] and (7) the Civil Rights Act of 1991. As a result of these laws, federal law prohibits discrimination in employment on the basis of:

- race;
- color;
- national origin (includes ancestry);
- religion;
- sex (includes pregnancy, childbirth, or related medical conditions, and pursuant to the U.S. Supreme Court's decision in *Bostock v. Clayton County, Georgia*, includes sexual orientation and gender identity);[420]
- disability (includes having a "record of" an impairment or being "regarded as" having an impairment);
- age (40); or
- genetic information.

The Equal Employment Opportunity Commission (EEOC) is the agency charged with handling claims under the antidiscrimination statutes.[421] Employees must first exhaust their administrative remedies by filing a complaint within 180 days—unless a charge is covered by state or local antidiscrimination law, in which case the time is extended to 300 days.[422]

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[414] 42 U.S.C. §§ 2000e *et seq.* Title VII applies to employers with 15 or more employees. 42 U.S.C. § 2000e(b).

[415] 42 U.S.C. §§ 12101 *et seq.* The ADA applies to employers with 15 or more employees. 42 U.S.C. § 12111(5).

[416] 29 U.S.C. §§ 621 *et seq*. The ADEA applies to employers with 20 or more employees. 29 U.S.C. § 630.

[417] 29 U.S.C. § 206(d). Since the Equal Pay Act is part of the FLSA, the Equal Pay Act applies to employers covered by the FLSA. *See* 29 U.S.C. § 203.

[418] 42 U.S.C. §§ 2000ff *et seq*. GINA applies to employers with 15 or more employees. 42 U.S.C. § 2000ff (refers to 42 U.S.C. § 2000e(f)).

[419] 42 U.S.C. §§ 1981, 1983.

[420] 140 S. Ct. 1731 (2020). For a discussion of this case, see LITTLER ON DISCRIMINATION IN THE WORKPLACE: RACE, NATIONAL ORIGIN, SEX, AGE & GENETIC INFORMATION.

[421] The EEOC's website is available at http://www.eeoc.gov/.

[422] 29 C.F.R. § 1601.13. Note that for ADEA charges, only state laws extend the filing limit to 300 days. 29 C.F.R. § 1626.7.

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3.11(a)(ii) *State FEP Protections*

Michigan's primary FEP protections are codified within the Persons With Disabilities Civil Rights Act and the Elliot-Larson Civil Rights Act (the "Antidiscrimination Acts"). The Antidiscrimination Acts prohibit discrimination on the basis of the following:

- disability (includes being regarded as disabled);
- genetic information;
- religion;
- race (inclusive of traits historically associated with race, including, but not limited to hair texture and protective hairstyles. *Protective hairstyles* includes, but is not limited to, such hairstyles as braids, locks and twists);
- color;
- national origin (includes ancestry);
- age;
- sex (includes pregnancy, childbirth, or related medical conditions; also includes sexual orientation and gender identity and, **effective March 28, 2024**, termination of pregnancy);[423]
- height;
- weight;
- marital status; [424]
- sexual orientation;[425] and
- (**effective March 21, 2024**) sexual orientation and gender identity or expression.[426]

Effective March 28, 2024, the Elliot-Larsen Civil Rights Act is amended to include the termination of pregnancy to the definition of "sex" and "pregnancy". Thus, an employer cannot discriminate against an employee or applicant due to the person's choice to terminate or not terminate a pregnancy.[427]

Although "[t]he opportunity to obtain employment . . .without discrimination because of . . . familial status" is noted as a civil right,[428] "familial status" is not included in any of the employment antidiscrimination provisions.

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[423] Note that on May 21, 2018, the Michigan Civil Rights Commission voted to include sexual orientation and gender identity under the definition of discrimination because of sex.

[424] MICH. COMP. LAWS §§ 37.1101 *et seq*. (disability), 37.2101 *et seq*. (other protected classes).

[425] In *Rouch World L.L.C. et al. v. Michigan Department of Civil Rights et al*, 987 N.W.2d 501 (Mich. 2022) the Michigan Supreme Court affirmed that the Elliot-Larson Civil Rights Act prohibits discrimination on the basis of an individual's sexual orientation.

[426] MICH. COMP. LAWS § 37.2202, as amended by S.B. 4 (Mich. 2023).

[427] MICH. COMP. LAWS §§ 37.2201, 37.2202.

[428] MICH. COMP. LAWS § 37.2102.

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Employers and their agents with one or more employees are covered under the Michigan (including hair texture and protective hairstyle)FEP laws.[429] The Antidiscrimination Acts' protections do not apply to the employment of an individual by their parent, spouse, or child.[430]

3.11(a)(iii) *State Enforcement Agency & Civil Enforcement Procedures*

The Michigan Department of Civil Rights (MDCR) enforces the Antidiscrimination Acts.[431] Complainants are not required to first exhaust their administrative remedies under the Acts and may file a charge directly in court. The time limit for filing an administrative complaint with the MDCR is 180 days after the act(s) complained of.[432]

If the MDCR may invite the respondent to participate in a conciliation conference, which may result in the complaint being resolved or recommendation that a charge be issued.[433] If a charge is issued, the respondent has 21 days to answer. The MDCR may hold a hearing on the charge.[434] After the hearing, the commission will issue a decision in writing, which may be appealed or modified.[435]

3.11(a)(iv) *Additional Discrimination Protections*

Nonemployment Activities. Employers with four or more employees must not gather or maintain a record of an employee's associations, political activities, publications, or communications of nonemployment activities. However, the employer may do so if the information is submitted in writing by or authorized in writing by the employee. The prohibition does not apply to activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or duties of other employees. A record which is kept by the employer as permitted under this statute is considered to be part of the employee's personnel record.[436]

State Militia Status. Employers may not deprive, "prevent, obstruct, or annoy" members of the state organized militia with respect to the members' employment. Violators are guilty of a misdemeanor.[437]

3.11(a)(v) *Local FEP Protections*

In addition to the federal and state laws, employers with operations in Ann Arbor, Detroit, Grand Rapids, Jackson, and Lansing are subject to local fair employment practices ordinances.

- **Ann Arbor.** Employers employing three or more individuals must extend antidiscrimination protections on the basis of: actual or perceived chronological age; arrest record; color; disability; educational association; familial status; family responsibilities; gender expression; gender identity; genetic information; height; HIV status; marital status; national origin;

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429 MICH. COMP. LAWS §§ 37.1201, 37.2201.

430 MICH. COMP. LAWS §§ 37.1202(3), 37.2202(3).

431 *See* http://www.michigan.gov/mdcr/.

432 MICH. COMP. LAWS § 37.2801; MICH. ADMIN. CODE r. 37.4 (6).

433 MICH. ADMIN. CODE r. 37.5.

434 MICH. ADMIN. CODE r. 37.12.

435 MICH. ADMIN. CODE r. 37.16 – 37.19.

436 MICH. COMP. LAWS §§ 423.501, 423.508.

437 MICH. COMP. LAWS § 750.398.

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political beliefs; race, including hair texture and protective hairstyles; religion; sex (including gender, gender identity, gender expression, pregnancy, childbirth, and medical conditions related to pregnancy and childbirth, as well as sexual harassment); sexual orientation; source of income; veteran status; victim of domestic violence or stalking; weight; and ethnicity.[438] Any individual alleging a violation of the ordinance may file a complaint with the City of Ann Arbor Human Rights Commission.[439] Additionally, to the extent allowed by law, an individual who is the victim of discriminatory action may bring a civil action for appropriate injunctive relief or damages.[440]

- **Detroit.** Employers (and their agents) employing one or more employees are subject to the following antidiscrimination protections: race; color; religious beliefs; national origin; age (chronological); marital status; disability; sex; sexual orientation; and gender identity or expression.[441] An individual alleging a violation of this ordinance may file a complaint with the Department of Civil Rights, Inclusion and Opportunity within one year after the alleged act or acts of discrimination (unless the act's existence was fraudulently undisclosed).[442] There is a separate ordinance that provides protections on the basis of AIDS and AIDS-related conditions,[443] although there is no city-level enforcement agency. An aggrieved individual may file a civil action or seek an injunction for violations of this ordinance.[444] The ordinance does not provide a statute of limitations.
- **East Lansing.** Employers (and their agents) employing one or more employees are subject to the following antidiscrimination protections: religion, race (including traits historically associated with race, including hair texture and protective hairstyles such as braids, locs, twists, and knots), color, national origin, age, disability, sex, height, weight, marital status, sexual orientation, gender identity or expression, or student status, or because of the use by an individual of adaptive devices or aids.[445] Any person claiming to be aggrieved by a violation may file with the human rights commission a signed, notarized complaint, in writing, which shall state the name and address of the person alleged to have deprived him/her of a civil right, the nature and date of the alleged deprivation. A person filing a complaint must do so within 180 days of the incident or situation which is the cause of the complaint.[446]
- **Grand Rapids.** Protected classifications include: race; color; religion or creed; national origin; genotype; age; gender identity or expression; sexual orientation; an individual's actual or perceived sex including identity, self-image, appearance, expression, or behavior, whether or not that identity, self-image, appearance, expression, or behavior is different from that

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[438] ANN ARBOR, MICH., CODE OF ORDINANCES §§ 9:150, 9:151 (definitions), 9:154, and 9:157 (exceptions).

[439] ANN ARBOR, MICH., CODE OF ORDINANCES § 9:159.

[440] ANN ARBOR, MICH., CODE OF ORDINANCES § 9:164.

[441] DETROIT, MICH., CODE OF ORDINANCES §§ 27-1-2 (definitions), 27-2-12 (exception for religious organizations), and 27-3-1.

[442] DETROIT, MICH., CODE OF ORDINANCES §§ 27-2-5, 27-2-7.

[443] DETROIT, MICH., CODE OF ORDINANCES §§ 27-7-2, 27-7-3 (includes exception for *bona fide* occupational qualifications), and 27-7-11 (exceptions).

[444] DETROIT, MICH., CODE OF ORDINANCES § 27-7-10.

[445] EAST LANSING, MICH., CODE OF ORDINANCES § 22-33.

[446] EAST LANSING, MICH., CODE OF ORDINANCES § 22-38.

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traditionally associated with the individual's biological sex assigned at birth; marital status; familial status; medical condition; disability; height and weight; source of lawful income.[447] *Employer* includes any person compensating one or more individuals for the performance of work in a lawful business or enterprise.[448] An individual alleging a violation of the ordinance may file a complaint with the City of Grand Rapids Office of Diversity and Inclusion (ODI) in person, via mail, or online within 180 calendar days of the date upon which the complainant knew or should have known of the alleged discriminatory act.[449]

- **Jackson.** Employers employing one or more persons must extend antidiscrimination protections on the basis of race; color; religion; national origin; sex; age (chronological); height; weight; marital status; physical or mental disability; family status; sexual orientation; and gender identity.[450] An individual alleging a violation of the ordinance may file a complaint with the City of Jackson Human Relations Commission within 30 calendar days from the date the individual knew or should have known of the allegedly discriminatory action.[451]
- **Lansing.** Protected classifications include: race; color; religion; national origin; sex (also includes sexual harassment); age (chronological, measured from the date of birth); height; weight; marital status; physical or mental disability; family status; sexual orientation; gender identity or expression; veteran status; HIV status; source of income; ancestry; student status; housing status; political affiliation or belief; and service in the armed forces of sovereign nations. Employers with a business located within or doing business in the corporate city limits of Lansing, and employing or seeking to employ five or more employees (including agents) are covered by the antidiscrimination ordinance.[452] Any person claiming to be discriminated against or harassed in violation of the ordinance may file a complaint with the Lansing Human Relations and Community Services Department within 180 days of the incident forming the basis of the complaint.[453] Additionally, any victim of discrimination retains the right to pursue all other legal actions to which the person may be entitled in addition to the remedies available under the ordinance.[454]

3.11(b) *Equal Pay Protections*

3.11(b)(i) *Federal Guidelines on Equal Pay Protections*

The Equal Pay Act requires employers to pay male and female employees equal wages for substantially equal jobs. Specifically, the law prohibits employers covered under the federal Fair Labor Standards Act

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[447] GRAND RAPIDS, MICH., CODE OF ORDINANCES §§ 9.937, 9.939 (*bona fide* occupational qualification exemption), 9.944 (exempted practices, which include restriction of employment opportunities to officers, religious instructors, and clergy of the denomination; discrimination based on an individual's age when such discrimination is required by state, federal, or local laws, rules, or regulations).

[448] GRAND RAPIDS, MICH. CODE OF ORDINANCES § 9.936.

[449] GRAND RAPIDS, MICH. CODE OF ORDINANCES §§ 9.947, 9.948, and 9.951.

[450] JACKSON, MICH., CODE OF ORDINANCES §§ 15-41 (definitions), 15-44 (exemption for *bona fide* occupational qualifications), and 15-45 (exceptions).

[451] JACKSON, MICH., CODE OF ORDINANCES § 15-46.

[452] LANSING, MICH., CODE OF ORDINANCES §§ 297.02 (definitions), 297.03, 297.07, 297.08 (exceptions), and 297.09 (other exceptions as required by law).

[453] LANSING, MICH., CODE OF ORDINANCES § 297.10.

[454] LANSING, MICH., CODE OF ORDINANCES § 297.16.

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(FLSA) from discriminating between employees within the same establishment on the basis of sex by paying wages to employees at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs—"the performance of which requires equal skill, effort, and responsibility, and which are performed under similar working conditions."[455] The prohibition does not apply to payments made under: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex.

An employee alleging a violation of the Equal Pay Act must first exhaust administrative remedies by filing a complaint with the EEOC within 180 days of the alleged unlawful employment practice. Under the federal Lilly Ledbetter Fair Pay Act of 2009, for purposes of the statute of limitations for a claim arising under the Equal Pay Act, an unlawful employment practice occurs with respect to discrimination in compensation when: (1) a discriminatory compensation decision or other practice is adopted; (2) an individual becomes subject to such a decision or practice; or (3) an individual is affected by application of such decision or practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.[456]

3.11(b)(ii) *State Guidelines on Equal Pay Protections*

In Michigan, a non-FLSA covered employer with two or more employees is prohibited from discriminating between employees on the basis of sex by paying wages to employees within the establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and that is performed under similar working conditions.[457] A wage differential is permitted if payment is made pursuant to one or more of the following: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex. An employer paying a wage differential in violation of the statute cannot reduce the wage rate of an employee to comply with the statute.

An employee alleging a violation of Michigan's equal pay statute may, within three years of the alleged violation, elect to file an administrative claim with the Department of Labor and Economic Opportunity or file a civil action.[458] In addition, an employer that discriminates in any way in the payment of wages as between male and female employees who are similarly employed is guilty of a misdemeanor.[459] Any difference in wage rates based upon a factor other than sex, however, does not violate the statute.

As discussed in 3.7(b)(v), Michigan law prohibits employers from barring employees from disclosing their wages.

3.11(c) *Pregnancy Accommodation*

3.11(c)(i) *Federal Guidelines on Pregnancy Accommodation*

As discussed in 3.9(c)(i), the federal Pregnancy Discrimination Act (PDA), which amended Title VII, the Family and Medical Leave Act (FMLA), and the Americans with Disabilities Act (ADA) may be implicated in

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[455] 29 U.S.C. § 206(d)(1).

[456] 42 U.S.C. § 2000e-5.

[457] MICH. COMP. LAWS §§ 408.412, 408.423.

[458] MICH. COMP. LAWS § 408.419.

[459] MICH. COMP. LAWS § 750.556.

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determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions.

Additionally, the Pregnant Workers Fairness Act (PWFA) makes it an unlawful employment practice for an employer of 15 or more employees to:

- fail or refuse to make reasonable accommodations for the known limitations related to the pregnancy, childbirth, or related medical conditions of a qualified employee, unless the employer can demonstrate that the accommodation would impose an undue hardship on its business operations;
- require a qualified employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation other than any reasonable accommodation arrived at through the interactive process;
- deny employment opportunities to a qualified employee, if the denial is based on the employer's need to make reasonable accommodations for the qualified employee;
- require a qualified employee to take leave, whether paid or unpaid, if another reasonable accommodation can be provided; or
- take adverse action related to the terms, conditions, or privileges of employment against a qualified employee because the employee requested or used a reasonable accommodation.[460]

A *reasonable accommodation* is any change or adjustment to a job, work environment, or the way things are usually done that would allow an individual with a disability to apply for a job, perform job functions, or enjoy equal access to benefits available to other employees. Reasonable accommodation includes:

- modifications to the job application process that allow a qualified applicant with a known limitation under the PWFA to be considered for the position;
- modifications to the work environment, or to the circumstances under which the position is customarily performed;
- modifications that enable an employee to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without known limitations; or
- temporary suspension of an employee's essential job function(s).[461]

The PWFA also provides for reasonable accommodations related to lactation, as described in **3.4(a)(iii)**.

An employee seeking a reasonable accommodation must request an accommodation.[462] To request a reasonable accommodation, the employee or the employee's representative need only communicate to the employer that the employee needs an adjustment or change at work due to their limitation resulting from a physical or mental condition related to pregnancy, childbirth, or related medical conditions. The employee must also participate in a timely, good faith interactive process with the employer to determine

[460] 42 U.S.C. § 2000gg-1. The regulations provide definitions of *pregnancy*, *childbirth*, and *related medical conditions*. 29 C.F.R. § 1636.3.

[461] 29 C.F.R. § 1636.3.

[462] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1636.3.

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an effective reasonable accommodation.[463] An employee is not required to accept an accommodation. However, if the employee rejects a reasonable accommodation, and, as a result of that rejection, cannot perform (or apply to perform) an essential function of the position, the employee will not be considered "qualified."[464]

An employer is not required to seek documentation from an employee to support the employee's request for accommodation but may do so when it is reasonable under the circumstances for the employer to determine whether the employee has a limitation within the meaning of the PWFA and needs an adjustment or change at work due to the limitation.

Reasonable accommodation is not required if providing the accommodation would impose an undue hardship on the employer's business operations. An *undue hardship* is an action that fundamentally alters the nature or operation of the business or is unduly costly, extensive, substantial, or disruptive. When determining whether an accommodation would impose an undue hardship, the following factors are considered:

- the nature and net cost of the accommodation;
- the overall financial resources of the employer;
- the number of employees employed by the employer;
- the number, type, and location of the employer's facilities; and
- the employer's operations, including:
  - the composition, structure, and functions of the workforce; and
  - the geographic separateness and administrative or fiscal relationship of the facility where the accommodation will be provided.[465]

The following modifications do not impose an undue hardship under the PWFA when they are requested as workplace accommodations by a pregnant employee:

- allowing an employee to carry or keep water near and drink, as needed;
- allowing an employee to take additional restroom breaks, as needed;
- allowing an employee whose work requires standing to sit and whose work requires sitting to stand, as needed; and
- allowing an employee to take breaks to eat and drink, as needed.[466]

The PWFA expressly states that it does not limit or preempt the effectiveness of state-level pregnancy accommodation laws. State pregnancy accommodation laws are often specific in terms of outlining an employer's obligations and listing reasonable accommodations that an employer should consider if they do not cause an undue hardship on the employer's business.

[463] 29 C.F.R. § 1636.3.

[464] 29 C.F.R. § 1636.4.

[465] 42 U.S.C. § 2000gg-1; 29 C.F.R. § 1630.2(p).

[466] 29 C.F.R. § 1636.3.

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Where a state law focuses primarily on providing job-protected leave for pregnancy or childbirth—as opposed to a pregnancy accommodation—it is discussed in **3.9(c)(ii)**. For more information on these topics, see **LITTLER ON LEAVES OF ABSENCE: FAMILY, MEDICAL & PREGNANCY LEAVES**.

3.11(c)(ii) *State Guidelines on Pregnancy Accommodation*

Michigan law does not address pregnancy accommodations for private-sector employees.

3.11(d) *Harassment Prevention Training & Education Requirements*

3.11(d)(i) *Federal Guidelines on Antiharassment Training*

While not expressly mandated by federal statute or regulation, training on equal employment opportunity topics—*i.e.*, discrimination, harassment, and retaliation—has become *de facto* mandatory for employers.[467] Multiple decisions of the U.S. Supreme Court[468] and subsequent lower court decisions have made clear that an employer that does not conduct effective training: (1) will be unable to assert the affirmative defense that it exercised reasonable care to prevent and correct harassment; and (2) will subject itself to the risk of punitive damages. EEOC guidance on employer liability reinforces the important role that training plays in establishing a legal defense to harassment and discrimination claims.[469] Training for all employees, not just managerial and supervisory employees, also demonstrates an employer's "good faith efforts" to prevent harassment. For more information on harassment claims and employee training, see **LITTLER ON HARASSMENT IN THE WORKPLACE** and **LITTLER ON EMPLOYEE TRAINING**.

3.11(d)(ii) *State Guidelines on Antiharassment Training*

Michigan's Persons With Disabilities Civil Rights Act requires the Department of Civil Rights to offer training programs to employers, labor organizations, and employment agencies to assist in understanding the requirements of the Act.[470]

3.12 Miscellaneous Provisions

3.12(a) *Whistleblower Claims*

3.12(a)(i) *Federal Guidelines on Whistleblowing*

Protections for whistleblowers can be found in dozens of federal statutes. The federal Occupational Safety and Health Administration ("Fed-OSHA") administers over 20 whistleblower laws, many of which have little or nothing to do with safety or health. Although the framework for many of the Fed-OSHA-administered statutes is similar (*e.g.*, several of them follow the regulations promulgated under the Wendell H. Ford Aviation Investment and Reform Act (AIR21)), each statute has its own idiosyncrasies, including who is covered, timeliness of the complaint, standard of proof regarding nexus of protected

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[467] Note that the Notification and Federal Employee Anti-Discrimination and Retaliation ("No FEAR") Act mandates training of federal agency employees.

[468] *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998); *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998); *see also Kolstad v. American Dental Assoc.*, 527 U.S. 526 (1999).

[469] EEOC, *Enforcement Guidance: Vicarious Employer Liability for Unlawful Harassment by Supervisors*, June 18, 1999, *available at* http://www.eeoc.gov/policy/docs/harassment.html; *see also* EEOC, *Select Task Force on the Study of Harassment in the Workplace: Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic* (June 2016), *available at* https://www.eeoc.gov/eeoc/task_force/harassment/report.cfm.

[470] *See* MICH. COMP. LAWS § 37.1212.

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activity, appeal or objection rights, and remedies available. For more information on whistleblowing protections, see LITTLER ON WHISTLEBLOWING & RETALIATION.

3.12(a)(ii) *State Guidelines on Whistleblowing*

Under the Michigan Whistleblowers' Protection Act, an employer is prohibited from discharging an employee because the employee, or a person acting on the employee's behalf, reports or is about to report a violation or suspected violation of a law, regulation, or rule to a public body.[471] *Public body* is defined to include bodies in the executive or legislative branches of state government, a law enforcement agency, or the judiciary.[472] The Act protects both public and private-sector employees.

To prevail on a claim under the Whistleblowers' Protection Act, a plaintiff must demonstrate that: (1) the individual was engaged in protected activity as defined by the Act; (2) the employer discharged the plaintiff; and (3) a causal connection exists between the protected activity and the discharge.[473] In *Trepanier v. National Amusements, Inc.*, the Michigan Court of Appeals allowed a whistleblowing claim to proceed under the state's whistleblower protection act based on a former employee's allegation that she was terminated because she took out a personal protective order against a coworker for making threatening phone calls.[474] The court held that "the plain language of the relevant statute did not limit protected activities under the statute to that which has a close connection to the work environment or to the employer's business practices."[475] An individual alleging a violation of the Whistleblowers' Protection Act are afforded a private right of action.[476]

Michigan also protects health care employees who report facility violations or wrongdoing or employees who report the mistreatment and abuse of vulnerable adults.[477]

3.12(b) *Labor Laws*

3.12(b)(i) *Federal Labor Laws*

Labor law refers to the body of law governing employer relations with unions. The National Labor Relations Act (NLRA)[478] and the Railway Labor Act (RLA)[479] are the two main federal laws governing employer relations with unions in the private sector. The NLRA regulates labor relations for virtually all private-sector employers and employees, other than rail and air carriers and certain enterprises owned or controlled by such carriers, which are covered by the RLA. The NLRA's main purpose is to: (1) protect employees' right to engage in or refrain from *concerted activity* (*i.e.*, group activities attempting to improve working conditions) through representation by labor unions; and (2) regulate the collective

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[471] MICH. COMP. LAWS §§ 15.361 *et seq*.

[472] MICH. COMP. LAWS § 15.361(d); *see also Kunkler v. Global Futures & Forex Ltd.*, 2004 WL 2169071 (Mich. Ct. App. Sept. 28, 2004) (affirming summary judgment for employer where the National Futures Association was not a "public body" because it was not created by state or local authority as required by the whistleblower statute).

[473] *Wurtz v. Beecher Metro Dist.*, 848 N.W.2d 121 (Mich. 2014).

[474] 649 N.W.2d 754 (Mich. Ct. App. 2002).

[475] 649 N.W.2d at 759.

[476] MICH. COMP. LAWS § 15.363.

[477] *See, e.g.*, MICH. COMP. LAWS §§ 333.16244, 333.20180, 333.21771, 400.586j, and 750.145p.

[478] 29 U.S.C. §§ 151 to 169.

[479] 45 U.S.C. §§ 151 *et seq*.

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bargaining process by which employers and unions negotiate the terms and conditions of union members' employment. The National Labor Relations Board (NLRB or "Board") enforces the NLRA and is responsible for conducting union elections and enforcing the NLRA's prohibitions against "unfair" conduct by employers and unions (referred to as *unfair labor practices*). For more information on union organizing and collective bargaining rights under the NLRA, see **LITTLER ON UNION ORGANIZING** and **LITTLER ON COLLECTIVE BARGAINING**.

Labor policy in the United States is determined, to a large degree, at the federal level because the NLRA preempts many state laws. Yet, significant state-level initiatives remain. For example, *right-to-work laws* are state laws that grant workers the freedom to join or refrain from joining labor unions and prohibit mandatory union dues and fees as a condition of employment.

3.12(b)(ii) *Notable State Labor Laws*

Michigan's right-to-work provisions were repealed, **effective February 13, 2024**.[480]

Repealed Right-to-Work Provisions

Under the repealed right-to-work law, an individual cannot be required as a condition of obtaining or continuing employment to:

- refrain or resign from membership in, voluntary affiliation with, or voluntary financial support of a labor organization;
- become or remain a labor organization member;
- provide a labor organization dues, fees, assessments, other charges or expenses of any kind or amount, or anything of value; or
- pay charitable organizations or third parties an amount in lieu of, equivalent to, or a portion of, dues, fees, assessments, or other charges or expenses required of members or employees represented by labor organizations.[481]

Violators are subject to a civil fine up to $500, payable to the state. Moreover, an aggrieved individual may file a civil suit for damages, injunctive relief, or both. In addition, courts may award court costs and reasonable attorney fees to a prevailing plaintiff.[482] Effective March 30, 2024, the penalty and remedy provisions are repealed.[483]

Right-to-Work Repeal

Effective February 13, 2024, employers and labor organizations may enter into a collective bargaining agreement that requires all employees in the bargaining unit to fairly share in the financial support of the labor organization.[484] The law does not prohibit or limit an agreement that requires all bargaining unit employees, as a condition of continued employment, or pay the labor organization membership dues or

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480 MICH. COMP. LAWS § 423.1 *et seq,* as amended by S.B. 34 (Mich. 2023).

481 MICH. COMP. LAWS §§ 423.8, 423.14.

482 MICH. COMP. LAWS § 423.14(6).

483 MICH. COMP. LAWS § 423.14, as amended by S.B. 34 (Mich. 2023).

484 MICH. COMP. LAWS § 423.14, as amended by S.B. 34 (Mich. 2023).

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services.[485] Additionally, the law prohibits any force, intimidation, or unlawful threats that would compel or attempt to compel any person to do the following:

- become or remain a member of a labor organization or otherwise affiliate with or financially support a labor organization; or
- refrain from joining a labor organization or otherwise affiliating with or financially supporting a labor organization.[486]

Michigan law also prohibits individuals and employers from instigating or engaging in a lockout. Individuals and labor organizations cannot engage in a strike or lockout without first serving proper notice to the Michigan Employment Relations Commission.[487] An aggrieved individual can seek any available legal or equitable remedy in state court for violations of the law.

4. END OF EMPLOYMENT

4.1 Plant Closings & Mass Layoffs

4.1(a) *Federal WARN Act*

The federal Worker Adjustment and Retraining Notification (WARN) Act requires a covered employer to give 60 days' notice prior to: (1) a *plant closing* involving the termination of 50 or more employees at a single site of employment due to the closure of the site or one or more operating units within the site; or (2) a *mass layoff* involving either 50 or more employees, provided those affected constitute 33% of those working at the single site of employment, or at least 500 employees (regardless of the percentage of the workforce they constitute).[488] The notice must be provided to affected nonunion employees, the representatives of affected unionized employees, the state's dislocated worker unit, and the local government where the closing or layoff is to occur.[489] There are exceptions that either reduce or eliminate notice requirements. For more information on the WARN Act, see LITTLER ON REDUCTIONS IN FORCE.

4.1(b) *State Mini-WARN Act*

Michigan does not have a traditional mini-WARN law requiring notice of a plant closing, although there is a provision encouraging notice of plant closings and relocations. Employers are encouraged to notify the Department of Labor and Economic Opportunity, affected employees, unions representing affected employees, and the community in which an establishment is located if they are considering closing or relocating operations that are located in the state.[490]

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[485] MICH. COMP. LAWS § 423.14, as amended by S.B. 34 (Mich. 2023).

[486] MICH. COMP. LAWS § 423.17, as amended by S.B. 34 (Mich. 2023).

[487] MICH. COMP. LAWS §§ 423.9, 423.22.

[488] 29 U.S.C. § 2101(1)-(3). Business enterprises employing: (1) 100 or more full-time employees; or (2) 100 or more employees, including part-time employees, who in aggregate work at least 4,000 hours per week (exclusive of overtime) are covered by the WARN Act. 20 C.F.R. § 639.3.

[489] 20 C.F.R. §§ 639.4, 639.6.

[490] MICH. COMP. LAWS §§ 450.732, 450.736, 445.2001, 445.2011, 445.2025, 445.2030.

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4.1(c) *State Mass Layoff Notification Requirements*

Michigan does not require that an employer notify the state unemployment insurance department or another department in the event of a mass layoff. However, employers whose workers have filed either 1,000 or more new claims or additional claims, or both, in each of the previous three calendar years must file claims on behalf of the workers.[491]

Additionally, as noted in **4.1(b)**, employers are encouraged to notify the Department of Labor and Economic Opportunity if they are considering closing or relocating operations that are located in the state.[492]

4.2 Documentation to Provide When Employment Ends

4.2(a) *Federal Guidelines on Documentation at End of Employment*

Table 11 lists the documents that must be provided when employment ends under federal law.

Table 11. Federal Documents to Provide at End of Employment

Category	Notes
Health Benefits: Consolidated Omnibus Budget Reconciliation Act (COBRA)	Under COBRA, the administrator of a covered group health plan must provide written notice to each covered employee and spouse of the covered employee (if any) of the right to continuation coverage provided under the plan.[493] The notice must be provided not later than the earlier of: • the date that is 90 days after the date on which the individual's coverage under the plan commences or, if later, the date that is 90 days after the date on which the plan first becomes subject to the continuation coverage requirements; or • the first date on which the administrator is required to furnish the covered employee, spouse, or dependent child of such employee notice of a qualified beneficiary's right to elect continuation coverage.
Retirement Benefits	The Internal Revenue Service requires the administrator of a retirement plan to provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them.[494]

[491] MICH. ADMIN. CODE r. 421.210.

[492] MICH. COMP. LAWS § 450.736.

[493] 29 C.F.R. § 2590.606-1. Model notices and general information about COBRA is available from the U.S. Department of Labor's Employee Benefits Security Administration at https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws/cobra.

[494] See the section "Notice given to participants when they leave a company" at https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.

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4.2(b) *State Guidelines on Documentation at End of Employment*

Table 12 lists the documents that must be provided when employment ends under state law.

Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
Health Benefits: Mini-COBRA, etc.	No notice requirement located.
Unemployment Notice	**Generally.** An employer must provide each worker at the time of the worker's separation from employment a copy of Form UA 1711, unemployment compensation notice to employee. (This duty does not apply to employers filing claims on behalf of employees as mentioned in 4.1(c).) This requirement is satisfied if the employer previously delivered a copy of Form UA 1711 to the worker, or if the employer has by any other method provided the worker an equivalent written statement notifying the worker of both of the following: • If the worker loses Form UA 1711 or the equivalent written notice from the employer, the worker may obtain a duplicate from a designated office in the establishment. • The worker should have Form UA 1711 or the equivalent written notice from the employer available for reference when filing a claim. If the state labor department finds that an employer failed to deliver Form UA 1711 or an equivalent before separation or fails to post adequate notices concerning replacement of a lost form, then the employer will be required to deliver Form UA 1711 or the equivalent written notice to a worker when the worker is separated from employment. The form or equivalent written notice must contain all of the following information: • employer's name and number of the employer's account with the department; • employer's address to which any request for wage or separation information, or both, must be directed; and • other information the department requires.[495] **Multistate Workers.** Whenever an individual covered by an election is separated from employment, an employer must again notify the

[495] MICH. ADMIN. CODE r. 421.204. Form UA 1711 is available in English at http://www.michigan.gov/documents/uia_UC1710_76109_7.pdf and in Spanish at http://www.michigan.gov/documents/uia/1711_6-16__SPN_Fillable_526886_7.pdf. Additional resources are available at https://www.michigan.gov/leo/bureaus-agencies/uia.

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Table 12. State Documents to Provide at End of Employment	
Category	**Notes**
	employee as to the jurisdiction under whose unemployment compensation law services have been covered. If at the time of the termination the individual is not located in the elected jurisdiction, then the employer must notify the employee as to the procedure for filing interstate benefit claims.[496] In addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.

4.3 Providing References for Former Employees

4.3(a) *Federal Guidelines on References*

Federal law does not specifically address providing former employees with references.

4.3(b) *State Guidelines on References*

In Michigan, employers may disclose an individual's job performance information from their personnel file upon request of the individual or the individual's prospective employer. Employers that disclose the information in good faith are immune from civil liability for the disclosure. Employers are presumed to be acting in good faith unless the employer: (1) knew the information was false or misleading; (2) disclosed the information with reckless disregard for the truth; or (3) disclosed the information when prohibited by a state or federal statute.[497]

[496] MICH. ADMIN. CODE r. 421.184.

[497] MICH. COMP. LAWS § 423.452.

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