

DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES

WAGE AND HOUR DIVISION

GENERAL RULES

(By authority conferred on the director of the department of consumer and industry services by section 6 of 1964 PA 154, MCL 408.386)

PART 1. GENERAL PROVISIONS

R 408.701 Definitions.

Rule 1. As used in these rules:

(a) "Act" means Act No. 154 of the Public Acts of 1964, as amended, being §408.381 et seq. of the Michigan Compiled Laws.

(b) "Administrative Capacity" means an employee who is compensated on a salary basis at not less than \$250.00 per week and whose primary duty is nonmanual work directly related to the administration of an educational institution.

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

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

(e) "Executive Capacity" means an employee to whom all of the following provisions apply:

(i) Compensation is on a salary basis at not less than \$250.00 per week.

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

(iii) The employee supervises 2 or more employees.

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

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

(h) "Professional Employee" means an employee who is compensated on a salary basis at no less than \$250.00 per week and whose primary duty is any of the following:

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

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

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

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

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

History: 1954 AC; 1979 AC; 1998-2000.

R 408.702 Records.

Rule 2. (1) An employer shall keep employment records for each employee showing all of the following:

(a) Name.

(b) Home address.

(c) Date of birth.

(d) Occupation in which employed.

(e) Total daily hours worked, showing the starting and ending times each day, computed to the nearest tenth of an hour, or other finer measure.

(f) Total hours worked in each pay period.

- (g) Total hours worked in each work period when the work period does not coincide with the pay period.
- (h) Total hourly, daily, or weekly basic wage.
- (i) Total wages paid each pay period.
- (j) Itemization of all deductions made each pay period.
- (k) Itemization of tips received in each pay period.
- (2) An employer shall keep records for employees paid on a piecework basis to indicate pieces produced.
- (3) If a credit is taken for gratuities received by an employee, then the employment records shall contain for each pay period in which the credit was taken a written statement of the amount of gratuities received by the employee. The statement shall be signed by the employee and dated before the date the paycheck was received.
- (4) Records required under this rule shall be preserved by the employer for not less than 3 years.

History: 1979 AC; 1981 AACS; 1998-2000 AACS.

R 408.703 Rescinded.

History: 1979 AC; 1981 AACS; 1998-2000 AACS.

R 408.704 Rescinded.

History: 1979 AC; 1981 AACS; 1998-2000 AACS.

R 408.705 Rescinded.

History: 1979 AC; 1981 AACS; 1998-2000 AACS.

R 408.706 Complaint; filing date; time limitation.

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

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

History: 1981 AACS; 1998-2000 AACS.

R 408.711 Scale of piecework for harvesting vegetables.

Rule 11. The following scale of piecework applicable to the harvesting of vegetables is determined by the wage deviation board to be equivalent to the prevailing minimum hourly wage for such work:

Crop/Unit	Rate Eff. 1/1/79	Rate Eff. 1/1/80	Rate Eff. 1/1/81
Asparagus (pound)	.091	.097	.105
Beans (Snap)(Bushel)	\$2.58	\$2.76	\$2.98
Cucumber (Pickles)(Pound)	.036	.038	.041
Greens (25 Pound Crate)	.534	.571	.617
Lettuce (Head)(24 Head Crate)	.158	.169	.183
Onions, Dry (Yellow)(5 Peck Crate)	.217	.232	.251
Onions, Dry (White)(5 Peck Crate)	.381	.407	.440
Onions, Green (Bunch)(8-9 Onions Per Bunch)	.058	.062	.067
Peppers, "Cherry" (Bushel)	\$1.86	\$1.99	\$2.15
Peppers, "Long Green" (Bushel)	.504	.539	.582
Potatoes (Bushel)	.172	.184	.199
Radishes (Dozen Bunches)(18-20 Radishes Per Bunch)	.480	.513	.554
Tomatoes, Fresh (5/8 Bushel Hamper)	.425	.454	.491
Tomatoes, Process (5/8 Bushel Hamper)	.31	.33	.36

History: 1979 AC.

R 408.712 Scale of piecework for harvesting fruits.

Rule 12. The following scale of piecework applicable to the harvesting of fruits is determined by the wage deviation board to be equivalent to the prevailing minimum hourly wage for such work:

Crop/Unit	Rate Eff. 1/1/79	Rate Eff. 1/1/80	Rate Eff. 1/1/81
Apples (Bushel)(Stripping Rate)	.335	.358	.387
Apples, Crab (Bushel)(Stripping Rate)	\$1.16	\$1.24	\$1.34
Blackberries (Quart)	.326	.348	.376
Blueberries, Hand Picked (Pound)	.173	.185	.20
Blueberries, Hand Vibrator Assisted (Pound)	.046	.049	.053
Cherries, Tart (27 Pound Lug)	\$1.61	\$1.72	\$1.86
Cherries, Sweet (24 Pound Lug)	\$1.77	\$1.89	\$2.04
Grapes, Concord & Niagara (Pound)	.018	.019	.021
Grapes, Delaware (Pound)	.023	.025	.027
Peaches, Process (Bushel)	.376	.402	.434
Pears (Bushel)	.520	.556	.601
Plums (Blue Damson, etc.)(Bushel)	\$2.32	\$2.48	\$2.98
Prunes (Italian, Stanley, etc) (Bushel)	.912	.975	\$1.05
Raspberries, Black (Quart)	.326	.348	.376
Raspberries, Red (Quart)	.454	.485	.524
Strawberries, Fresh (Quart)	.173	.185	.20
Strawberries, Process (Pound)	.124	.133	.144

History: 1979 AC.

R 408.713 Scale of piecework for sorting and bunching strawberry plants.

Rule 13. The following scale of piecework applicable to the sorting and bunching of strawberry plants is determined by the wage deviation board to be equivalent to the prevailing minimum hourly wage for such work:

Crop/Unit	Rate Eff. 1/1/79	Rate Eff. 1/1/80	Rate Eff. 1/1/81
Strawberries, Machine Assisted (Thousand)	\$5.71	\$6.10	\$6.59
Strawberries, Nonmechanically Assisted (Thousand)	\$7.62	\$8.15	\$8.81

History: 1954 ACS 55, Eff. Aug. 14, 1968; 1954 ACS 65, Eff. Sept. 21, 1970; 1954 ACS 83, Eff. Apr. 2, 1975; 1954 ACS 95, Eff. June 13, 1978; 1954 ACS 99, Eff. Apr. 18, 1979; 1979 AC.

PART 2. OVERTIME COMPENSATION

R 408.721 Determining workweek for overtime compensation.

Rule 21. (1) An employer shall establish an employee's workweek and shall indicate the beginning time and day of the workweek in the employment record for the employee.

(2) Once the beginning time of an employee's workweek is established, it remains fixed and may be changed only if the change is intended to be permanent and is not designed to evade the overtime requirements of the act.

(3) Each workweek stands alone. Averaging of hours over 2 or more weeks is prohibited, regardless of whether the employee works on a standard or swing shift schedule and regardless of whether the employee is paid on an hourly, daily, weekly, biweekly, monthly, piecework, commission or other basis, except as otherwise provided by law.

History: 1979 ACS 8, Eff. Dec. 2, 1981; 2000 MR 1, Eff. Feb. 1, 2000.

R 408.722 Work period.

Rule 22. (1) An employer shall establish an employee's work period and shall indicate the beginning and ending time and date of the work period in the employment record for the employee.

(2) The work period need not coincide with the pay period.

(3) The beginning and ending date of a work period shall not be changed, regardless of the number of hours worked within the period, unless the change is intended to be permanent and is not designed to evade the overtime requirements of the act.

(4) An employer may have different work periods for different employees.

History: 1979 ACS 8, Eff. Dec. 2, 1981; 2000 MR 1, Eff. Feb. 1, 2000.

R 408.723 Computing regular rate of pay for overtime compensation.

Rule 23. (1) If an employee is paid on an hourly rate plus commission or salary plus commission, then the salary and commission shall be considered as gross earnings for the workweek, and the regular rate is obtained by dividing the sum by the number of hours for which the salary was paid.

(2) If an employee is paid on a piece-rate basis, then the regular rate of pay is computed by adding together the total earnings of the workweek from piece rates and all other earnings and any sums paid for other hours worked. This sum total is divided by the number of hours worked in that week to yield the pieceworker's regular rate for that week.

History: 1981 AACS; 1998-2000 AACS.

R 408.724 Rescinded.

History: 1981 AACS; 1998-2000 AACS.

R 408.725 Rescinded.

History: 1981 AACS; 1998-2000 AACS.

R 408.726 Rescinded.

History: 1981 AACS; 1998-2000 AACS.

R 408.727 Rescinded.

History: 1981 AACS; 1998-2000 AACS.

R 408.728 Amusement and recreational establishments exempt from overtime provisions.

Rule 28. (1) An employer's business shall be considered an amusement or recreational establishment if it complies with all of the following provisions:

- (a) It is open for the general public at a fixed site.
- (b) It is open primarily to provide leisure activities for those who attend.
- (c) It does not operate for more than 7 months in a calendar year.

(2) A grocery store, restaurant, motel, curio, souvenir shop, or any other retail and service establishment is not considered an amusement or recreational establishment unless it is so related to an amusement or recreational establishment that it could not, in a reasonable manner, offer its services to the general public independently, and is not open to the general public beyond the months the amusement or recreational establishment to which it is related is open.

(3) The exempt status of an amusement or recreational establishment and a grocery store, restaurant, motel, curio, souvenir shop, or other retail and service establishment operated under the same ownership shall be determined separately for each establishment.

(4) If an amusement or recreational establishment operates at widely separated fixed locations, the exempt status of each fixed location shall be determined separately.

History: 1981 AACS; 1998-2000 AACS.

R 408.729 Employees of an amusement or recreational establishment.

Rule 29. (1) Employees of a central office or warehouse or office which services an amusement or recreational establishment shall not be considered employed by the amusement or recreational establishment.

(2) An employee whose duties are divided between working for an amusement or recreational establishment and a nonexempt business owned by the same employer shall not be exempt from the overtime provisions of the act for any workweek in which work performed at the nonexempt business exceeds 20% of the hours worked.

History: 1981 AACS; 1998-2000 AACS.

R 408.730 Employment in agriculture.

Rule 30. (1) An employee shall not be considered employed in agriculture for any workweek in which nonagricultural work exceeds 20% of the hours worked in the workweek.

(2) An employee of an establishment which produces agricultural commodities and sells such commodities to the general public shall not be considered employed in agriculture, regardless of his or her duties, if more than 50% of the gross income of the establishment results from sales to the general public.

History: 1981 AACCS; 1998-2000 AACCS.

R 408.731, R 408.732 Rescinded.

History: 1979 AC; 1981 AACCS.

R 408.733 Rescinded.

History: 1981 AACCS; 1998-2000 AACCS.

R 408.734 Rescinded.

History: 1981 AACCS; 1998-2000 AACCS.

R 408.735 Rescinded.

History: 1981 AACCS; 1998-2000 AACCS.