



May 2006

EMPLOYER BULLETIN:

Wage and Hour Issues to Look Out For!

ARE EMPLOYERS REQUIRED TO PAY EMPLOYEES FOR TRAVEL TIME?

THE FLSA: Under the Fair Labor Standards Act, (“FLSA”) employees must be compensated for all time spent on their principal work activities for the employer. "Principal activities" are activities that are integral and indispensable to the employer's business and are determined by particular facts of each case. Additionally, the Portal to Portal Act to the FLSA provides an employer need not compensate employees for: (1) walking, riding or traveling to and from the actual place of performance of the principal activity or activities; and (2) activities that are preliminary to or postliminary to principal activities which an employee is engaged to perform.

TRAVEL TIME AWAY FROM HOME: Travel away from home is work time when it cuts across the employee's workday. The employee is simply substituting travel for other duties. For example, if normal working hours are 8am to 5pm, Monday through Friday, and the employee must perform job related travel on Sunday from 3pm to 7pm, the employer would need to pay for the time from 3pm to 5pm which are the normal hours of work. However, work performed while traveling must be counted as hours worked. The Department of Labor does not consider time spent traveling outside of regular working hours as a passenger on an airplane, train, boat, bus or automobile as ‘work time’. Accordingly, an employee need only be paid for travel time that is within the normal working hours.

RATE OF PAY: All travel time must be paid at the employee's regular rate of pay. However, if there is an agreement between the employer and employee to pay the employee at a rate less than the employee's normal rate of pay, exact records of non-travel time and travel time must be maintained and the regular rate of pay is calculated using the “weighted average” method. Paying a lower rate of pay is allowable under the FLSA as long as the rate is at least the minimum wage and the regular rate for overtime purposes would be the weighted average of the two rates. However, it is inadvisable to pay employees at a different rate of pay for travel time due to the complexity of the overtime calculation method necessary and the record keeping involved. Additionally, there could be issues regarding interpretation of the agreement between the parties regarding the lower rate of pay.

TRAVEL TO WORK IN ANOTHER CITY (ONE DAY ASSIGNMENT): An employee who regularly works at a fixed location in one city is given a special one day assignment in another city and returns home that same day must be compensated for the travel time to and from the other city. However, the employer may deduct the time the employee would normally spend commuting to the regular worksite. For example, if an employee's return travel time is 1 hour and 30 minutes from the one day assignment, but it typically takes the employee 30 minutes to return to his home from the regular workplace, the employee may be paid only 1 hour (1:30 minus :30).

ARE YOU PROPERLY COMPLYING WITH WAGE AND HOUR REQUIREMENTS REGARDING DEDUCTIONS FROM WAGES?

The Michigan Wage and Fringe Benefit Act regulates the time and manner of the payment of wages and fringe benefits to employees. An employer can lawfully make deductions from an employee's wages only if: (1) it is empowered or authorized to do so under state or federal law (i.e., federal and state withholding taxes, garnishments pursuant to a court order); or (2) when a deduction is expressly authorized in a writing signed and dated by the employee (i.e., for insurance premiums); or (3) when a deduction to cover health, welfare or pension contributions is expressly covered by a collective bargaining agreement.

However, an employer is not required to obtain the written consent of an employee to correct the overpayment of wages to an employee. The overpayment of wages must have occurred as a result of a mathematical miscalculation, typographical error, clerical error, or misprint and must be taken within 6 months after making the overpayment. The

employee must be given written notice of the deduction at least one pay period before the deduction is taken. Finally, the amount deducted may not be greater than 15% of the employee's gross wages for the pay period nor may the deduction reduce the employee's wages below the minimum wage required by law.

Any Wage and Hour questions should be directed to Heather Ptasznik or John Below at (313) 259-8300.

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***MICHIGAN RAISES THE
MINIMUM WAGE RATE EFFECTIVE OCTOBER 1, 2006***

On March 28, 2006, Governor Jennifer Granholm signed a bill raising Michigan's current minimum wage of \$5.15 an hour. The minimum wage will be raised in three steps. On October 1, 2006, it will increase to \$6.95; then to \$7.15 on July 1, 2007 and to \$7.40 on July 1, 2008. The new minimum wage rates will affect every employer in the state, with limited exceptions for young workers in training settings, apprentice and learner programs, and for persons with impaired earning capacity because of physical or mental disabilities.

The minimum wage in Michigan has not been raised since 1997. Michigan joins more than 15 other states that have increased their minimum wage over federal standards. The current minimum wage matches the federal minimum wage rate.