

HOUSE BILL NO. 4390

April 12, 2023, Introduced by Reps. Haadsma, Breen, Hood, Farhat, Brabec, Morse, Price, Weiss, Snyder, Brenda Carter, Tsernoglou, Hope, Andrews, Edwards and Scott and referred to the Committee on Labor.

A bill to amend 1978 PA 390, entitled

"An act to regulate the time and manner of payment of wages and fringe benefits to employees; to prescribe rights and responsibilities of employers and employees, and the powers and duties of the department of labor; to require keeping of records; to provide for settlement of disputes regarding wages and fringe benefits; to prohibit certain practices by employers; to prescribe penalties and remedies; and to repeal certain acts and parts of acts,"

by amending sections 1, 13, 15, 18, and 19 (MCL 408.471, 408.483, 408.485, 408.488, and 408.489), section 1 as amended by 2016 PA 18, and by adding sections 13c and 13d.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. As used in this act:

2 (a) "Department" means the department of ~~licensing and~~
3 ~~regulatory affairs.~~ **labor and economic opportunity.**

4 (b) "Employ" means to engage or permit to work.

5 (c) "Employee" means an individual employed by an employer.
6 **Employee does not include an independent contractor.**

7 (d) "Employer" means an individual, sole proprietorship,
8 partnership, association, or corporation, public or private; this
9 state or an agency of this state; a city, county, village,
10 township, school district, or intermediate school district; an
11 institution of higher education; or an individual acting directly
12 or indirectly in the interest of an employer who employs 1 or more
13 individuals. Except as specifically provided in the franchise
14 agreement, as between a franchisee and franchisor, the franchisee
15 is considered the sole employer of workers for whom the franchisee
16 provides a benefit plan or pays wages.

17 (e) "Fringe benefits" means compensation due an employee
18 pursuant to a written contract or written policy for ~~holiday, time~~
19 **off for holidays**, time off for sickness or injury, time off for
20 personal reasons or vacation, bonuses, authorized expenses incurred
21 during the course of employment, and contributions made on behalf
22 of an employee.

23 (f) "Independent contractor" means an individual who performs
24 **work for a payer for remuneration and to whom all of the following**
25 **apply:**

26 (i) **The individual is free from control and direction of the**
27 **payer in connection with the performance of the work, both under a**
28 **contract and in fact.**

1 (ii) The individual performs work that is outside the usual
2 course of the payer's business.

3 (iii) The individual is customarily engaged in an independently
4 established trade, occupation, or business of the same work
5 performed by the individual for the payer.

6 (g) "Payer" means a person who pays remuneration to an
7 independent contractor for work the independent contractor performs
8 for the payer.

9 (h) ~~(f)~~ "Wages" means all earnings of an employee whether
10 determined on the basis of time, task, piece, commission, or other
11 method of calculation for labor or services. ~~except those defined~~
12 ~~as Wages does not include~~ fringe benefits. ~~under subdivision (e)~~
13 ~~above.~~

14 Sec. 13. (1) An employer shall not discharge, ~~an employee~~
15 **retaliate against**, or **otherwise** discriminate against an employee
16 because the employee filed a complaint, instituted or caused to be
17 instituted a proceeding under or regulated by this act, **or**
18 testified or is about to testify in a proceeding, ~~or~~ because of
19 the exercise by the employee on behalf of an employee or others of
20 a right afforded by this act.

21 (2) An employee who believes that ~~he or she~~ **the employee** is
22 discharged, ~~or~~ **retaliated against**, **or** otherwise discriminated
23 against by an employer in violation of this section may file a
24 complaint with the department alleging the **discharge, retaliation,**
25 **or** discrimination ~~within~~ **not later than** 30 days after the violation
26 occurs. Upon receipt of the complaint, the department shall cause
27 an investigation to be made. If, upon **completing** the investigation,
28 the department determines that this section was violated, the
29 department shall order the rehiring or reinstatement of an employee

1 to ~~his or her~~ **the employee's** former position with back pay.

2 (3) An employer may seek review of the department's
3 determination by following the procedure provided in section 11(4)
4 to (9).

5 **Sec. 13c. A person shall not classify, report, or treat an**
6 **employee as an independent contractor. A person who is alleged to**
7 **have violated this section has the burden of proving, by a**
8 **preponderance of the evidence, that the person did not classify,**
9 **report, or treat the employee as an independent contractor.**

10 **Sec. 13d. (1) The wages and fringe benefits fund is created in**
11 **the state treasury.**

12 (2) The state treasurer shall deposit money and other assets
13 received from any source into the fund. The state treasurer shall
14 direct the investment of the money in the fund and credit interest
15 and earnings from the investments to the fund.

16 (3) Money in the fund at the close of the fiscal year must
17 remain in the fund and not lapse to the general fund.

18 (4) The department is the administrator of the fund for
19 auditing purposes.

20 (5) The department shall expend money from the fund, upon
21 appropriation, only to enforce this act.

22 **Sec. 15. An employer who, with the intent to defraud, ~~fails to~~**
23 **~~make payment of~~ violates section 13c or does not pay** the wages and
24 fringe benefits due an employee as provided in this act ~~is~~ guilty
25 of a misdemeanor ~~is~~ punishable by a fine of not more than \$1,000.00,
26 ~~or~~ imprisonment for not more than 1 year, or both.

27 **Sec. 18. (1) The department shall order an employer who**
28 **violates section 2, 3, 4, 5, 6, 7, ~~or~~ 8, or 13c to pay the**
29 **following:**

1 (a) Wages due ~~to~~ the employee.

2 (b) Fringe benefits due ~~to~~ or on ~~the~~ behalf of the employee in
3 accordance with ~~the terms set forth in the~~ written contract or
4 written policy.

5 (c) A penalty at the rate of ~~10%~~ **100%** annually on the wages
6 and fringe benefits due **to the employee**, beginning at the time the
7 employer is notified that a complaint has been filed and ending
8 when payment is made.

9 (2) The department may order an employer who violates section
10 2, 3, 4, 5, 6, 7, ~~or~~ **8, or 13c** to pay to the employee exemplary
11 damages of not more than ~~twice~~ **3 times** the amount of the wages and
12 fringe benefits ~~which that~~ were due **to the employee**, if the
13 violation is flagrant or repeated.

14 (3) The department may order an employer who violates section
15 2, 3, 4, 5, 6, 7, ~~or~~ **8, or 13c** to pay attorney costs, hearing
16 costs, and transcript costs.

17 (4) The department may assess a civil ~~penalty~~ **fine** of not more
18 than ~~\$1,000.00~~ **\$10,000.00** against an employer who violates this
19 act. ~~which~~ **The** civil ~~penalty shall~~ **fine must** be credited to the
20 general fund of this state.

21 (5) **All of the following apply to an employer's violation of**
22 **section 13c:**

23 (a) **If the department collects a penalty or damages from an**
24 **employer for violating section 13c, the department shall, unless**
25 **otherwise prohibited by law, pay to the affected employee 50% of**
26 **the money collected.**

27 (b) **The department shall order an employer who violates**
28 **section 13c to pay a penalty in an amount equal to the estimated**
29 **federal taxes and Medicare payments, if any, that would have been**

1 due the employee if the employer had not violated section 13c.
2 Subject to subdivision (a) and unless otherwise prohibited by law,
3 money collected under this subdivision must be deposited into the
4 wages and fringe benefits fund created in section 13d.

5 (c) The department shall notify the department of treasury and
6 the unemployment insurance agency of the violation.

7 Sec. 19. The director of ~~labor~~**the department** shall, **and the**
8 **attorney general may**, initiate, in the county where the violation
9 occurred, in ~~the county of~~**Ingham County**, or in the county where
10 the employer has its principal office, the civil action necessary
11 to enforce an order of the department ~~which~~**that** has become a final
12 agency order as prescribed in this act.