DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

PAYMENT OF WAGES AND FRINGE BENEFITS

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

R 408.9001 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9002 Definitions; A to I.

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

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

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

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

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

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

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

(2) As used in the act:

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

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

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

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

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

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

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

(iii) The employee supervises 2 or more employees.

(c) "An employee employed in a bona fide professional capacity" means an employee who is compensated on a salary or fee basis at not less than $455.00 per week and whose primary duty is any of the following:

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

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

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

(d) "Bonus" means a premium or extra or irregular remuneration in addition to wages that is awarded to an employee under a written contract or written policy.

(e)"Director" means the director of the department or his or her authorized representative.

(f)"Informally resolve" means any of the following:

(i) Voluntary payment in full as defined in R 408.9002.

(ii) A settlement agreement as described in R 408.9026.

(iii) Withdrawal of the complaint as described in R 408.9027.

(iv) Dismissal of the complaint due to lack of jurisdiction, as described in R 408.9036.

History: 1982 AACS; 1998-2000 AACS; 2003 AACS; 2006 AACS; 2014 AACS.

R 408.9003 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9004 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9005 Payment of fringe benefits on termination.

Rule 5. An employer shall pay fringe benefits due an employee at termination on the regularly scheduled payday for the period in which the termination occurs, unless otherwise specified in the terms of a written contract or written policy.

History: 1982 AACS; 1998-2000 AACS.

R 408.9006 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9007 Payment of wages on termination.

Rule 7. (1) An employer shall pay all wages due an employee who quits or is discharged, except for an employee who was engaged in the hand harvesting of crops, on the regularly scheduled payday for the period in which the termination occurs.

(2) An employer shall pay all wages due a discharged employee who was engaged in the hand harvesting or crops within 1 working day of the termination.

History: 1982 AACS; 1998-2000 AACS.

R 408.9008 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9009 Signed authorization; maintenance.

Rule 9. An employer shall maintain signed authorizations in the employment records.

History: 1982 AACS; 1998-2000 AACS.

R 408.9010 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9011 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

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

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

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

History: 1982 AACS; 1998-2000 AACS; 2003 AACS; 2014 AACS.

Editor's Note: An obvious error in R 408.9012 was corrected at the request of the promulgating agency, pursuant to Section 56 of 1969 PA 306, as amended by 2000 PA 262, MCL 24.256. The rule containing the error was published in *Michigan Register*, 2014 MR 23. The memorandum requesting the correction was published in *Michigan Register*, 2015 MR 1.

R 408.9013 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9014 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9015 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9016 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9017 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9018 Filing date.

Rule 18. The filing date of a complaint is the date the complaint form or other written complaint is received by the department.

History: 1982 AACS.

R 408.9019 Acceptance of complaints by department.

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

(a) Name and address of complainant.

(b) Name and address of employer who is alleged to have committed the violation.

(c) The date or dates the violation is alleged to have occurred.

(d) An estimate of the amount of wages or fringe benefits claimed.

History: 1982 AACS; 1998-2000 AACS; 2003 AACS; 2014 AACS.

R 408.9020 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9021 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9022 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9023 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9024 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9025 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9026 Settlement agreement.

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

(a) The amount of payment agreed to.

(b) The terms of payment agreed to.

(c) The date payment is due.

(d) A waiver of all rights to contest the amount due.

(2) The settlement agreement shall be signed by both of the following entities:

(a) The complainant.

(b) The employer or the employer's representative.

History: 1982 AACS; 1998-2000 AACS; 2014 AACS.

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

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

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

History: 1982 AACS; 1998-2000 AACS; 2014 AACS.

R 408.9028 Departmental determination.

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

(a) The name of the complainant.

(b) The name of the employer.

(c) The findings of the department.

(d) A citation to the sections of the act violated, if any.

(e) An order for the payment of wages or fringe benefits due, if any, plus a 10% per annum penalty.

(f) An assessment of the civil penalties, if any, and the basis for the assessment.

(g) An assessment of exemplary damages, if any, and the basis for the assessment.

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

History: 1982 AACS; 1998-2000 AACS; 2014 AACS.

R 408.9029 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9030 Appeal of department determination.

Rule 30. (1) The 14-day period within which an appeal of a departmental determination may be filed excludes the date of the determination. The calendar day that the appeal is due is included. If the last day of the 14-day period is Saturday, Sunday, or a state holiday, then that day is excluded and the period extends until the end of the next day that is not a Saturday, Sunday, or state holiday.

(2) An appellant shall submit a written appeal which is signed by the appellant and which contains all of the following information:

(a) The determination number.

(b) The name of the employer.

(c) The name of the employee.

(3) An appellant shall submit an appeal to the department at the address specified on the determination.

(4) The department shall transmit an appeal received more than 14 days after the notification of determination is issued to the hearings office of the department to determine if good cause exists for a late appeal.

History: 1982 AACS; 1998-2000 AACS.

R 408.9031 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9032 Rescinded.

History: 1982 AACS; 1998-2000 AACS.

R 408.9033 Assessment of penalties; civil penalty.

Rule 33 (1) A civil penalty assessed under this rule shall not be more than $1,000.00.

(2) An employer who violates section 2 to 8 or section 10 of the act shall be assessed a civil penalty of 50% of the amount of wages and fringe benefits due an employee.

(3) A civil penalty assessed under subrule (2) of this rule shall be collected only if the director is required to initiate civil action to enforce an order of the department that has become a final agency order.

(4) A civil penalty of $1,000.00 shall be assessed for a violation of section 13 or section 13a of the act.

(5) A civil penalty of $1,000.00 may be assessed for a violation of section 9 of the act.

History: 1982 AACS; 1998-2000 AACS; 2006 AACS.

R 408.9034 Assessment of exemplary damages.

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

(a) If the employer was previously found to have violated the same section of the act against the same employee at any time within 12 months before the occurrence of the violation.

(b) If the department determines that the act was deliberately and knowingly violated.

(2) The department may assess exemplary damages at not more than twice the amount of wages and fringe benefits which were due and shall be paid to the employee.

History: 1982 AACS; 2014 AACS.

R 408.9035 Payment of wages by payroll debit card; conditions.

Rule 35. Pursuant to section 6 of the act, an employer or agent of an employer may use a payroll debit card to pay wages to an employee, if all of the following conditions are satisfied:

(a) The employee can obtain payment of his or her wages in full, when they are due and payable.

(b) Prior to the issuance of a payroll debit card to an employee, the employer shall provide to the employee a written notice of all of the following:

(i) The terms and conditions of the payroll debit card.

(ii) Disclosure of fees that may be assessed by the card issuer.

(iii) Disclosure that additional fees may be assessed by third parties through use of a payroll debit card in addition to fees assessed by the card issuer.

(c) If a payroll debit card is used, then the cardholder, not the issuer or the bank, shall possess ownership of the funds. Neither the issuer nor the bank shall 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:

(i) A credit made to the wrong employee account.

(ii) A duplicate credit made to an employee account.

(iii) A credit that differs from the amount in the transmittal instructions.

(iv) A correction as described in section 7(4) of the act, being MCL 408.477(4).

(d) If an employer deposits wages into a pooled account accessible to an employee using a payroll debit card, the employer shall 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 shall be indicated on records maintained by the card issuer, the depository institution's deposit account, or a third party.

History: 2006 AACS.

R 408.9036 Lack of jurisdiction.

Rule 36. The following complaints shall be dismissed:

(a) A complaint alleging violation of sections 2 to 10 and 13a of the act, if the filing date is more than 12 months after the date the violation is alleged to have occurred.

(b) An employee discrimination complaint alleging violation of section 13(2) of the act, if the filing date is more than 30 days after the date the violation is alleged to have occurred.

(c) A complaint involving fringe benefits not defined under section 1(e) of the act.

(d) A complaint involving employment in the classified state civil service system.

(e) A complaint involving railroad employees covered by the railway laborers act.

(f) A complaint for which a civil action is filed by the claimant or for which there is a civil judgment that includes the same wages or fringe benefits claimed with the department.

(g) A complaint alleging either of the following:

(i) A claim period covered by a discharge of debt.

(ii) Non-payment of wages or fringe benefits earned prior to the filing of a bankruptcy petition or reorganization plan.

(h) A complaint for wages or fringe benefits earned by an employee of an employer not identified in section 1(d) of the act, including any of the following:

(i) The United States postal service.

(ii) A foreign government.

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

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

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

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

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

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

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

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

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

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

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

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

History: 2014 AACS.