

**Michigan Office of Administrative Hearings and Rules
Administrative Rules Division**

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**REQUEST FOR RULEMAKING
(RFR)**

Department Information

Department	Department of Labor and Economic Opportunity
Bureau	Wage and Hour Division/Bureau of Employment Relations
Title of Proposed Ruleset	Wage and Hour Division General Rules
Rule Number(s) or Ruleset Range of Numbers	R 408.701 – R 408.787
Estimated Time	8- 12 months
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RFR Form

7. Describe the general purpose of these rules, including any problems the changes are intended to address.

The purpose of these rules is to change the salary test for EAP employees in order to better capture employees who work in a bona fide “executive, administrative or professional capacity.” This will have the effect of extending overtime rights to cover more employees.

8. Please cite the specific promulgation authority for the rules (i.e. department director, commission, board, etc.).

Section 4a(5) of 2018 PA 337 and Executive Order 2019-3 authorize the Department of Labor and Economic Opportunity to define the terms used in section 4a(4), including “executive, administrative or professional capacity.”

A. Please list all applicable statutory references (MCLs, Executive Orders, etc.).

MCL 408-931- 408.945 and Executive Order 2019-3 (MCL 125.1998)

B. Are the rules mandated by any applicable constitutional or statutory provision? If so, please explain.

No

9. Please describe the extent to which the rules conflict with or duplicate similar rules, compliance requirements, or other standards adopted at the state, regional, or federal level.

The FLSA in 29 CFR 541 provides a federal definition of “exempt” employee, and EAP employee. According to the US Dept of Labor, “some states have [their own] overtime laws. In cases where the employee is subject to both state and federal overtime laws, the employee is entitled overtime pay according to the higher standard.” Five states, including Pennsylvania, (PA 231.81-231.84) have already taken action to expand the overtime right beyond the minimum extent of the right provided by Federal Law.

10. Is the subject matter of the rules currently contained in any guideline, handbook, manual, instructional bulletin, form with instructions, or operational memoranda?

Yes, the subject matter is contained in a Wage Hour Division policy manual.

11. Are the rules listed on the department’s annual regulatory plan as rules to be processed for the current year?

Yes

12. Will the proposed rules be promulgated under Section 44 of the Administrative Procedures Act, 1969 PA 306, MCL 24.244, or under the full rulemaking process?

The rules will be promulgated under the full rule making process.

13. Please describe the extent to which the rules exceed similar regulations, compliance requirements, or other standards adopted at the state, regional, or federal level.

(Same as #9 above) The FLSA in 29 CFR 541 provides a federal definition of “exempt” employee, and EAP employee. According to the US Dept of Labor, “some states have [their own] overtime laws. In cases where the employee is subject to both state and federal overtime laws, the employee is entitled overtime pay according to the higher standard.” Five states, including Pennsylvania, (PA 231.81-231.84) have already taken action to expand the overtime right beyond the minimum extent of the right provided by Federal Law.

14. Do the rules incorporate the recommendations received from the public regarding any complaints or comments regarding the rules? If yes, please explain.

Not applicable

15. If amending an existing rule set, please provide the date of the last evaluation of the rules and the degree, if any, to which technology, economic conditions, or other factors have changed the regulatory activity covered by the rules since the last evaluation.

Last evaluated in October, 2019, there are no changes to the regulatory activity covered by these rules.

16. Are there any changes or developments since implementation that demonstrate there is no continued need for the rules, or any portion of the rules?

None

17. Is there an applicable decision record (as defined in MCL 24.203(6) and required by MCL 24.239(2))? If so, please attach the decision record.

None