Michigan Labor and Employment Guide

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ONLINE SOLUTIONS

This publication offers an overview of federal and state requirements for Michigan home-based care employers. Where applicable, municipal ordinances from the state's largest cities may be included, but only when pertaining to background checks, domestic worker bill of rights, local minimum wage, paid sick leave, or antidiscrimination provisions. Employers may find the information useful in understanding their compliance obligations. Employers must comply with both federal and state law. When a federal and state law address the same subject matter, the employer must generally comply with the law that is most beneficial to employees.

Subscribers to the premium state compliance materials package can locate a template Michigan employee handbook to assist with compliance with employment related laws for home-based care employers here.

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PRE-HIRE

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Salary History Inquiries	**Federal:** There are no federal laws prohibiting prospective employers from asking prospective employees about their salary history at previous employers. Employers are advised to comply with state laws regulating salary history inquiries where applicable. Further, employers must be cautious in attempting to restrict prospective employees from discussing salary histories with current and prospective employees. While employers may restrict employees from discussing their salary in front of customers or while they are supposed to be working, employers may not entirely prohibit employees from discussing compensation and benefits. The National Labor Relations Act (NLRA) gives all employees the right to "engage in concerted activities," including the right to discuss their terms and conditions of employment with each other. The NLRA also treats an employer's denial or limitation of those employee rights as an unfair labor practice. Based upon the above, the National Labor Relations Board (NLRB) has taken the position that employers may not prohibit employees from discussing their pay and benefits, and that any attempts to do so violate the NLRA. **Michigan:** There are no Michigan laws regulating salary history inquiries for private employers. Employers/ prospective employers are advised to comply with federal laws regulating salary history inquiries where applicable. *Subscribers to the premium state compliance materials package can locate a template Employment Application compliant with federal and state law here.*
Job Application Fees, Deductions, or Other Charges	**Federal:** There are no federal laws prohibiting job application fees, deductions, or other charges. Employers are advised to comply with state laws regulating job application fees, deductions, or other charges where applicable.

Statute / Regulation	Requirement
Mich. Comp. Laws § 408.478.	**Michigan:** An employer/prospective employer, agent or representative of the employer, or other person with the authority to hire, employ, or direct employees may not demand or receive, directly or indirectly, a fee, gift, tip, gratuity, or other remuneration as a condition of employment or continuing employment. This does not apply to any fees collected by licensed employment agencies. Moreover, an employer/prospective employer may not require an employee or applicant to make charitable contributions as a condition of employment, except for a contribution required or expressly permitted by law or by a collective bargaining agreement. Michigan employers/prospective employers may not require new hires or employees returning from a leave of absence to pay for medical examinations, photographs, or fingerprinting that the employer/prospective employer requests.
Job Applicant Photographs EEOC, *Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations, Notice No. 915.002* (Oct. 10, 1995).	**Federal:** There are no federal laws prohibiting employers from requiring an applicant to provide a photograph of themselves with their application. However, unless directly job related, it is unlawful to ask about an applicant's weight, height, impairment or other non-specified job-related physical data because the inquiry tends to disproportionately limit the employment opportunities of some protected groups. Therefore, it is inadvisable to require a photograph which would disclose the applicant's physical appearance. Employers are further advised to comply with state laws regulating job application photographs where applicable. **Michigan:** There are no Michigan laws restricting employers/prospective employers from requesting job applicant photographs. We recommend employers/prospective employers follow the guidelines outlined in the federal section above. In addition, it is inadvisable to require an applicant to provide a photograph of themselves with their application. When employment starts, we recommend employers obtain an executed photograph release form from applicants at the time of hire if their image may be used for commercial purposes after hire. *Subscribers to the base compliance materials package can locate a template Photo Release Authorization for employees compliant with applicable law here.*

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Criminal History Inquiries EEOC, *Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended 42 U.S.C. § 2000e, et seq.* (Apr. 25, 2012).	**Federal:** There are no federal laws prohibiting employers from inquiring about an applicant's criminal history. However, the federal Equal Employment Opportunity Commission (EEOC) has issued guidance on the consideration of arrest and conviction records in employment decisions. In general, the EEOC's positions are: Arrest Records. An exclusion from employment based on an arrest itself is not job related and consistent with business necessity as required under Title VII. However, an employer can consider the underlying conduct related to the arrest and make an employment decision if that conduct makes the person unfit for the particular position. Conviction Records. An employer with a policy excluding applicants from employment based on criminal convictions must show that the policy effectively ties specific criminal conduct with risks related to the particular duties of the position. The EEOC typically considers three factors when analyzing how specific criminal conduct may be linked to particular positions: (a) the nature and gravity of the offense or conduct; (b) the time that has passed since the offense, conduct, and/or completion of the sentence; and (c) the nature of the job held or sought. **Michigan:** Ban-the-Box Law. There are no Michigan laws that implement a state "ban-the-box" law. Employers/prospective employers are advised to comply with federal laws regulating inquiries into an applicant's criminal history where applicable.
Mich. Comp. Laws § 37.2205a(1). Michigan Dep't of Civil Rights, *Pre-Employment Inquiry Guide* (rev. June 2012). Mich. Comp. Laws §§ 780.622(1); 780.623(5); 712A.18e(11); (16).	Use of Arrest Records. As part of the job application process or in connection with the terms and conditions of employment, an employer/prospective employer or employment agency may not inquire about, make, or maintain a record of a misdemeanor arrest, detention, or disposition that did not result in conviction. Moreover, a person will be found not guilty of perjury or otherwise giving a false statement by failing to recite or acknowledge information the person has a civil right to withhold under this law. However, employers/ prospective employer may inquire into pending felony charges before a conviction or dismissal.

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Mich. Comp. Laws §§ 330.1001-330.2106; 333.1101-333.25211; 400.701-400.737. Mich. Comp. Laws §§ 722.111-722.128. Mich. Comp. Laws §§ 432.201-432.226. Mich. Comp. Laws §§ 333.27101-333.27801. Mich. Comp. Laws §§ 338.1051-338.1092. Mich. Comp. Laws §§ 493.131-493.171. Mich. Comp. Laws §§ 28.831-28.841. Mich. Comp. Laws §§ 791.234d; 600.2956a	Likewise, it is illegal for employers/prospective employers, except law enforcement agencies, to ask applicants about any arrests which did not result in conviction. However, an employer/prospective employer may ask whether there are any felony charges pending against the applicant. Certain categories of employees must undergo criminal background checks as a condition of employment, including: • Employees of long-term care facilities; • Employees of child care organizations; • Casino employees; • Employees in medical cannabis facilities; • Employees in security businesses; • Mortgage loan originators. Michigan employers that provide care or care placement services for the “care, treatment, education, training, supervision, or recreation to a child, an elderly individual, or an individual with a disability,” may use the department of state police volunteer criminal history system to conduct background checks if employees provide their fingerprints and a signed written statement with: • their name, address, and date of birth; • waiver to permit the employer to receive the information; and • disclosure of any past convictions or pending charges. Employers must provide the employees with notice that the background report received may be used to determine fitness for the position and notice that the employees can obtain a copy of the report, along with the right to challenge the accuracy of the report. These notices should be signed by the employee as well. Use of Conviction Records. The Michigan Department of Civil Rights takes the position that an employer/prospective employer may ask applicants whether they have ever been convicted of a crime. Moreover, Michigan places no statutory restrictions on an employer’s use of conviction records, but employers should be cognizant of federal law in this area.

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	Use of Sealed or Expunged Records. A person whose conviction has been set aside is considered not to have been convicted, other than felonies or attempted felonies punishable by life in prison. Any person besides the applicant or victim, who knows or should know that a conviction was set aside and who divulges, uses, or publishes information concerning such is guilty of a misdemeanor. Likewise, where an adjudication of a juvenile offense has been set aside, the person is considered not to have been previously adjudicated. Any person, other than the applicant, who knows or should know that a juvenile adjudication was set aside, is guilty of a misdemeanor if they use that information. An individual who has been convicted of a crime may obtain a certificate of employability from the Court when released from prison. The certificate of employability shows that the applicant has been vetted by the criminal justice system and has shown high character, honesty, and is held in high regard in their community. This certificate will grant the employer immunity from claims of negligent hiring, retention, or supervision. If the employee subsequently demonstrates dangerous or threatening proclivities, or they are convicted of a subsequent criminal offense, then the employer will no longer be immune from claims of negligent hiring, retention, or supervision should it continue to employ the employee. This does not relieve an employer's duties to comply with background check laws or laws mandating specific hiring qualifications for certain jobs. *Subscribers to the premium state compliance materials package can find template notices, consents and other materials for conducting background checks in the state here.* **Municipal:**
Detroit City Code, Chapter 35, § 35-1-21; Chapter 17 § 17-5-261.	City of Detroit: Employers within the City of Detroit may not inquire into an applicant's criminal background prior to an in-person interview.

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Grand Rapids City Code § 9.959	City of Grand Rapids: Employers within the City of Grand Rapids must consider applicants with a criminal background for employment. Employers are not obligated to interview all applicants with a criminal conviction record, but employers cannot reject applications from applicants with a criminal conviction record out of hand solely due to the applicant's criminal record. If an applicant has been arrested but not convicted of a crime, employers within the City of Grand Rapids cannot refuse to hire the applicant based solely on the applicant's arrest without a conviction. Employers are not obligated to hire individuals who have been arrested without a conviction, but employers cannot use an applicant's arrest record as the lone basis to refuse to hire an individual. When considering an applicant with a criminal conviction record, employers must analyze the following factors: • The nature and severity of the crime; • The individual's age at the time of the crime; • Whether there have been repeat offenses; • Whether the individual maintained a good employment history before and after the conviction; • Evidence of rehabilitation efforts; • Whether the crime may pose a demonstrable risk to the health, safety, or welfare of other employees, persons, or property. If the employer has considered the factors listed above, and it deems the applicant unsuitable for employment because it views the applicant's criminal history as too recent, repeated, too violent, or dangerous, for example, then the employer may decide not to hire the applicant based on their criminal record. If the employer simply chooses not to hire the applicant based on their criminal conviction record without conducting the process of considering the applicant's individual circumstances, then the employer may be liable under this statute. Employers need not disclose their analysis to the applicant; employers need only conduct a specific internal review of the applicant's unique record before making any hiring decisions. If the employer chooses to not hire the applicant based on this review, then the employer has complied with this statute.

Statute / Regulation	Requirement
	Subscribers to the premium state compliance materials package can locate a template Employment Application compliant with federal and state law here.
Employer's Use of Credit Checks Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681a(k)(1), 1681b(b).	**Federal:** Pursuant to the Fair Credit Reporting Act, before obtaining an employee's consumer report – commonly referred to as a "background check," – an employer must certify to the consumer reporting agency that the employer: (a) has made certain, specific disclosures to the employee or applicant (see below); (b) will comply with the conditions required to take adverse employment actions (see below); and (c) will not use information from the consumer report in violation of any applicable Federal or State equal employment opportunity law or regulation. Disclosure and Authorization: An employer may not obtain or cause to be obtained a consumer report for employment purposes unless: (a) a clear and conspicuous disclosure has previously been made in writing to the employee or applicant, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and (b) the employee or applicant has authorized in writing the procurement of the report by the employer. The disclosure and authorization can be contained in the same document, but there are strict limits on extraneous information such as liability waivers or indemnification provisions. Adverse Employment Actions: Before taking any adverse action based in whole or in part on a consumer report, an employer shall provide to the employee or applicant: (a) a copy of the report; and (b) a copy of "A Summary of Your Rights Under the Fair Credit Reporting Act," found here. An Adverse Action is defined as "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee." Examples include failure to hire, termination of employment, or a pay cut. **Michigan:** There are no Michigan laws regulating an employer's use of an applicant's credit information and does not have a state equivalent to the federal Fair Credit Reporting Act law. Employers are advised to comply with federal laws regulating credit checks where applicable. *Subscribers to the premium state compliance materials package can locate template notices, consents and other materials for conducting background checks in the state here.*

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	Home-based care providers should also consult the applicable state licensing guides available on POSH to determine whether the state has unique background check requirements for particular caregiver positions.
Drug and Alcohol Testing of Applicants Drug-Free Workplace Act 41 U.S.C. §§ 81, *et seq*. Mich. Comp. Laws § 37.1211(a); Mich. Comp. Laws § 750.354a.	**Federal:** There are no federal laws prohibiting drug and alcohol testing of applicants. Employers are advised to comply with state laws regulating drug and alcohol testing of applicants where applicable. The Drug-Free Workplace Act of 1988 applies only to federal grant recipients of any size and federal contractors with a contract for more than $100,000. Unless a federal grant recipient or a federal contractor with a contract for more than $100,000, home-based care employers are not required by federal law to adopt a drug-free workplace policy or establish a drug-free awareness program. However, an employer may elect to do so in an effort to promote workplace safety, deter employees' illegal drug use, and diminish employee absenteeism and turnover. **Michigan:** There are no Michigan laws regulating drug and alcohol testing of applicants. Employers/prospective employers are advised to comply with federal laws regulating drug and alcohol testing of applicants where applicable. Employers are permitted to establish policies with respect to the use of alcohol or illegal drugs within the workplace. If employers choose to establish an alcohol or drug testing program they are not permitted to require newly-hired employees to pay for the cost of alcohol or drug screening. *See also* **Drug and Alcohol Testing of Current Employees** *Drug and Alcohol testing programs vary significantly based on employer preferences and available choices and should be tailored to each employer's needs. For assistance in drafting a program and policies compliant with federal and state law, please contact us here.*
Employers Accessing Applicant's Social Media Accounts	**Federal:** There are no federal laws specifically prohibiting employers from accessing an applicant's social media accounts. However, employers are prohibited under equal employment opportunity laws from taking adverse employment actions based on an applicant's (or employee's) legally protected characteristics. Therefore, it is inadvisable to request information about an applicant's social media and social media use.

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Mich. Comp. Laws §§ 37.272; 37.273; 37.275.	Employers are further advised to comply with state laws regulating accessing applicant’s social media sites where applicable. **Michigan:** An employer/prospective employer cannot request that an applicant grant access to, allow observation of, or disclose information that allows access to or observation of the individual’s personal internet account. An employer/prospective employer also cannot discharge, discipline, fail to hire, or otherwise penalize an applicant for failing to grant access to, allow observation of, or disclose information that allows access to or observation of the individual’s personal internet account. “Personal internet account” means “an account created via a bounded system established by an internet-based service that requires a user to input or store access information via an electronic device to view, create, utilize, or edit the user’s account information, profile, display, communications, or stored data.” “Access information” means “username, password, login information, or other security information that protects access to a personal Internet account.” An employer/prospective employer can view, access, or use information about an applicant that can be obtained without any required access information or that is available in the public domain. The law also does not prohibit or restrict an employer from complying with a duty to screen applicants (or applicants) prior to hiring or to monitor or retain employee communications that is established under federal law or by a self-regulatory organization (as defined by the Securities and Exchange Act of 1934). *See also* **Electronic Monitoring**. *Subscribers to the base compliance materials package can locate a template Social Media Policy that may be customized to your business needs here.* *Social Media Policies frequently vary based on employer preferences and available choices and should be tailored to each employer’s needs. For assistance in customizing a legally compliant Social Media Policy, please contact us here.*

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Use of Artificial Intelligence in Employment Decisions EEOC, Select Issues: Assessing Adverse Impact in Software, Algorithms, and Artificial Intelligence Used in Employment Selection Procedures Under Title VII of the Civil Rights Act of 1964, https://www.eeoc.gov/select-issues-assessing-adverse-impact-software-algorithms-and-artificial-intelligence-used#	**Federal:** Employers are increasingly using various forms of technological resources in making employment decisions. They may be used in various decisions, including but not limited to recruiting, new hiring, retaining employees, promoting employees, transferring to new positions, monitoring performance, demoting employees, terminating employees, and providing referrals. Some of these resources are using a new form of technology called artificial intelligence ("AI") to aid in this decision making. However, the increased use of these resources has the potential to cause a disproportionally large negative effect (disparate impact) on one or more protected classes, something that is prohibited under Title VII of the Civil Rights Act of 1964 ("Title VII"), which applies to all employment practices of covered employers. Congress has defined AI as a "machine-based system that can, for a given set of human-defined objectives, make predictions, recommendations or decisions influencing real or virtual environments." This may include the use of any or all of the following: machine learning, intelligent decision support systems, natural language processing and understanding, computer vision, and autonomous systems. Some typical examples of the use of tools that may incorporate AI include, "resume scanners that prioritize applications using certain keywords; employee monitoring software that rates employees on the basis of their keystrokes or other factors; 'virtual assistants' or 'chatbots' that ask job candidates about their qualifications and reject those who do not meet pre-defined requirements; video interviewing software that evaluates candidates based on their facial expressions and speech patterns; and testing software that provides 'job fit' scores for applicants or employees regarding their personalities, aptitudes, cognitive skills, or perceived 'cultural fit' based on their performance on a game or on a more traditional test."

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	Employers, like with all other tools used in employment decisions, must assess their usage of tools that may contain AI to ensure that a protected class is not selected substantially less than any other group to ensure compliance with Title VII. If the tool does cause a disparate impact on a protected class, employers will need to be able to show that the tool is "job related and consistent with business necessity," to avoid a Title VII violation. Notably, employers still have the obligation to ensure compliance with Title VII even if the tool was developed by an outside vendor and/or the decision was made by an agent of the employer. Employers considering the use of or currently using AI in employment decisions are encouraged to consult with employment counsel to ensure compliance with Title VII. **Michigan:** There are no state laws restricting an employer's use of artificial intelligence in employment decisions. Employers are advised to comply with federal and local laws regulating the use of artificial intelligence in employment decisions where applicable. *See also* **Fair Employment Practices Protections**
Other Employer State Restrictions	**Michigan:** There are no Michigan laws regulating other employer inquiry restrictions. Employers/prospective employers are advised to comply with federal laws regulating inquiry restrictions where applicable.
Medical Exams and Honesty Testing 42 U.S.C. § 12112; 29 C.F.R. §§ 1630.13 to 1630.14 29 U.S.C. §§ 2001 to 2009; 29 C.F.R. §§ 801.1 to 801.75)	**Federal:** Medical Exams. Employers cannot discriminate against qualified employees or applicants based on disability regarding medical examinations and inquiries. Specifically: • Employers cannot require medical exams for employees, unless these exams are shown to be job-related and consistent with business necessity. Employers can conduct voluntary medical exams and activities, including voluntary medical histories, as part of employer-sponsored health programs made available to employees.

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	• Employers cannot conduct medical exams on applicants unless the exams are required after employment offers are made but before the prospective employees start work. Employers can condition employment offers on the results of medical exams if all new employees in the same job category are subject to the exams regardless of disability. Applicants' medical exams do not have to be job-related and consistent with business necessity. If certain criteria are used to screen out applicants with disabilities as a result of the exams, however, such criteria must be job-related and consistent with business necessity. Employers cannot ask employees whether they have disabilities or about the nature or severity of their disabilities, unless these inquiries are shown to be job-related and consistent with business necessity. However, employers can ask employees about their ability to perform job-related functions. Employers also can ask applicants to describe or show how they would be able to perform these functions, with or without reasonable accommodations. If employers obtain information about employees' or applicants' medical conditions or histories, it must be collected and maintained on separate forms in separate medical files and treated as confidential medical records. However, employers can inform supervisors and managers about necessary restrictions on employees work or duties and necessary accommodations; inform first-aid and safety personnel, when appropriate, if employees' disabilities might require emergency treatment; and provide relevant information to government officials investigating ADA compliance upon their request. Medical exam results only can be used for permitted purposes. Honesty Testing. Employees and applicants cannot waive their rights under the Employee Polygraph Protection Act (EPPA), unless the waiver is part of a written, signed settlement agreement entered into by all parties to a pending complaint or lawsuit. Employers cannot: • directly or indirectly require, request, or cause employees and applicants to take lie detector tests;

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	• use, refer to, or inquire about the results of employees' and applicants' lie detector tests; • take or threaten to take adverse action (including discharge, discipline, discriminatory action, or denial of employment or promotion) against employees and applicants who refuse lie detector tests; • take or threaten to take such adverse action against employees and applicants based on the results of lie detector tests; or • take or threaten to take such adverse action against employees and applicants because they file complaints, initiate or testify in proceedings under or related to the EPPA, or exercise rights under the EPPA on behalf of themselves or other persons.
	Michigan:
Mich. Comp. Laws § 37.1202 Mi. St. § 750.354a	Medical Exams: Employers cannot refuse to hire applicants based on physical or mental exams unless the physical or mental exams are directly related to job requirements. Employers are required to pay the costs of medical testing. It is illegal for an employer to require an employee to pay the cost of a medical examination. Employers are liable for a penalty up to $100.00 for each violation.
	See also **Drug and Alcohol Testing of Applicants**
Mich. Comp. Laws § 37.203.	Honesty Testing: Employers cannot request or require applicants or employees to submit to a polygraph test. Furthermore, employers are barred from attempting to, threatening to, or actually administering a polygraph test. Employers may not require applicants or employees to waive their right to decline a polygraph test.

TIME OF HIRE

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Immigration Documents: Form I-9 8 C.F.R. § 274a.2.	**Federal: Verification of identity and employment authorization.** Employers must ensure that newly hired employees properly complete Form I-9 section 1 ("***Employee Information and Verification***") at the time of hire and sign the attestation on the employee section of the Form I-9 confirming citizenship status under penalty and perjury. The Form I-9 can be presented in paper or electronic format. Newly hired employees must present documentation establishing their identity and employment authorization. Within three business days of the first day of employment, employers must physically examine the documentation presented in the employee's presence, complete Form I-9, section 2 ("***Employer Review and Verification***"), and sign the attestation of examination of documents that evidence the identity and employment authorization of the employee under penalty and perjury. **Michigan:** There are no Michigan laws regulating the requirement of private employers to ensure that applicants/newly hired employees complete immigration documents at the time of hire. Employers are advised to comply with federal laws regulating the requirement to ensure that applicants/newly hired employees complete immigration documents where applicable. *Subscribers to the base compliance materials package can locate an I-9 Form and Instructions here.*
Tax Documents 26 C.F.R. § 3402(f)(2)(A). Mich. Admin. Code r. 206.24.	**Federal:** All employees must complete and sign under penalty of perjury a Form W-4 relating to their marital status and the number of withholding exemptions they claim so that the employer can withhold the correct federal income for an employee's pay. When employees start a new job, they must fill out a Form W-4 and submit it to their employer. If an employee needs to change the information later, the employee must fill out a new form. **Michigan:** Employees must submit a signed withholding exemption certificate (Form MI-W4) to their employers on or before the date that their employment begins. If the employee fails or refuses to cooperate with or provide information to their employer related to the submission of his certificate, the employer must withhold tax from the employee's compensation without allowance for any exemptions.

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	Employers are required to notify the Michigan Department of Treasury if an employee has claimed ten (10) or more personal or dependency exemptions or claimed that they are exempt from withholding prior to February 15, of the subsequent year. Failing to do so will restrict employees' ability to claim tax exemptions. The income tax withheld from compensation paid to employees is a personal obligation of the employer (taxpayer) and is due and payable on or before the fifteenth (15) day of the month next succeeding the month in which the tax was withheld. The commissioner of revenue may require that returns are filed on other than a monthly basis. The employer must compile a tax return for the preceding month on the form required by the department, showing the amount of the tax for which the employer is liable and mail the return, together with a remittance for the amount of the tax, payable to the state of Michigan, to the address as indicated on the return, on or before the fifteenth (15th) day of the following month. The return must be signed by the employer or its duly authorized agent. Beginning in 2023, forms can be filed only online. To file, select form 5080 *here*. Every employer required to withhold federal income tax from compensation paid an employee, must also withhold Michigan income tax from (a) compensation paid to the employee if the employee is a resident of Michigan, and (b) from that portion of the compensation earned in Michigan if the employee is not a resident of Michigan, unless (i) the compensation is paid to an employee from whom the employer is prohibited from withholding Michigan income tax because of a federal law, or (ii) the employer is not required to withhold Michigan income tax because of a reciprocal agreement between Michigan and another state or between Michigan and another city. *A Form W-4 can be located here.* *A Form Michigan-W-4 can be located here.*
Benefits and Leave Documents: Affordable Care Act (ACA) 26 U.S.C. § 36B; 42 U.S.C. § 18071; 29 U.S.C. § 218b.	**Federal:** The ACA provides that all applicable large employers covered under the Fair Labor Standards Act (FLSA) (coverage usually met by employing two or more employees and an annual volume of sales or business of at least $500,000) must provide to each employee, at the time of hiring, written notice about insurance options, including:

Statute / Regulation	Requirement
	(1) informing the employee of the existence of an Exchange (i.e., an online marketplace for health insurance under the ACA that is run by state or federal government), including a description of the services provided by such Exchange, and the manner in which the employee may contact the Exchange to request assistance; (2) if the employer plan's share of the total allowed costs of benefits provided under the plan is less than 60 of such costs, that the employee may be eligible for a premium tax credit and a cost sharing reduction if the employee purchases a qualified health plan through the Exchange; and (3) if the employee purchases a qualified health plan through the Exchange, the employee may lose the employer contribution (if any) to any health benefits plan offered by the employer and that all or a portion of such contribution may be excludable from income for Federal income tax purposes.
26 U.S.C. § 4980H.	Under the ACA, an applicable large employer is any employer who had an average of at least fifty (50) employees on business days during the preceding calendar year. For new employers who do not have a previous calendar year, the employer should use the reasonably expected average number of employees in the current calendar year. A full-time employee, for purposes of calculation, is an employee, in any month, who is employed on average at least thirty (30) hours per week. In addition, employers must calculate for "full-time equivalent" employees by adding the number of other employee hours in each month and dividing that number by one hundred twenty (120) [ex: in June the employer's non-full time employees worked a total of 240 hours, this would be divided by 120, for a total of 2 full-time equivalent employees which should be counted toward the total of employees for that month in calculating averages]. Once the employer has added together their full-time employees and full-time equivalent employees for each month in the previous year, those monthly totals should be added together and divided by twelve (12) to determine if the employer has an average of at least fifty (50) employees. If the final number is fifty (50) or more, then the employer qualifies as an applicable large employer and is subject to these requirements. The U.S. Department of Labor's Employee Benefits Security Administration provides a model notice in English and Spanish for employers that offer a health plan to some or all employees and a separate notice for employers that do not offer a health plan *here*.

Statute / Regulation	Requirement
	Michigan: There are no Michigan laws regulating notice to applicants/newly hired employees regarding requirements about insurance options under the ACA. Employers are advised to comply with federal laws regulating notice requirements about insurance options under the ACA where applicable. *For assistance with ACA compliance, please contact us here.*
Benefits and Leave Documents: Family and Medical Leave Act (FMLA) 29 C.F.R. §§ 825.100 - 825.313.	**Federal:** The FMLA provides certain eligible employees with up to 12 weeks of unpaid, job-protected leave for specified family and medical reasons per year. It also requires that their group health benefits be maintained during the FMLA leave. FMLA covered employers (for private sector employers, 50 or more employees in 20 or more workweeks in the current or preceding calendar year) must provide a notice explaining rights and responsibilities under the FMLA to each FMLA-covered employee (*see* **Family and Medical Leave** for employee eligibility requirements). Covered employers must post such a notice, include the notice in an employee handbook or other written guidance concerning employee benefits or leave rights, or distribute the notice to each employee upon hire, including electronically. Employers may use a format other than the FMLA's template poster as notice, if the format includes all of the same information in that poster. For a more comprehensive list of benefits and leave documents under the Family and Medical Leave Act, employers can reference "The Employer's Guide to The Family and Medical Leave Act" provided by the United States Department of Labor, Wage and Hour Division, a copy of which can be located here. **Michigan:** There are no Michigan laws regulating notice to applicants/newly hired employees on benefits or leave rights at the time of their hire. Employers are advised to comply with federal laws regulating benefits and leave notices where applicable. *An FMLA Poster can be located* here. *Subscribers to the base compliance materials package can locate a template FMLA policy compliant with federal law* here.
State Fair Employment Practices Documents: Pregnancy Discrimination and Accommodation Mich. Comp. Laws §§37.2201(d); 37.2202(d)	**Michigan:** Michigan law prohibits employers from failing or refusing to hire or recruit an individual on the basis of sex. Michigan Law defines sex to include pregnancy, childbirth, the termination of a pregnancy, or a related medical condition. It is further illegal for an employer to treat an individual affected by pregnancy, childbirth, the termination of a pregnancy, or a related medical condition differently for any employment-related purpose.

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Uniformed Services Employment and Reemployment Rights Act (USERRA) Documents 38 U.S.C. §§ 4311 – 4319, 4334.	**Federal:** USERRA requires employers to re-employ certain employees who leave their jobs to enter military service and provide for other employee benefits while employees are serving in the military. Employers are prohibited from discriminating and retaliating against employees and applicants for exercising any rights under USERRA. Employers must provide to persons covered under USERRA a notice of employee and employer rights, benefits, and obligations. Employers may meet the notice obligation by posting notice where employers customarily place employee notices. **Michigan:** There are no Michigan laws regulating notice to applicants/newly hired employees of employee benefits or leave at the time of their hire. Employers are advised to comply with federal laws regulating benefits and leave notices where applicable. *A USERRA Poster can be located here.* *Subscribers to the base compliance materials package can locate a template Military Leave policy compliant with federal law here.* *Subscribers to the premium state compliance materials package can locate a template Family and Medical Leave (Federal FMLA) policy compliant with state law here.*
Other State Benefits and Leave Documents	**Michigan:** There are no Michigan laws regulating notice to applicants/newly hired employees of employee benefits or leave at their time of hire. Employers are advised to comply with federal laws regulating notice to newly hired employees of employee benefits or leave at their time of hire.
Unemployment Insurance Documents 26 U.S.C. §§ 3301-3311	**Federal:** As the federal government generally does not directly provide unemployment benefits, the Federal Unemployment Tax Act (FUTA) does not require employers to make any notifications to new or separated employees. FUTA requires most employers, including home care companies, to pay federal unemployment tax in addition to unemployment tax paid to states and other jurisdictions. The federal unemployment tax is a flat rate (6%) assessed on a wage base applicable for all U.S. employers. The tax is assessed on employers; there is no employee liability. Employers generally are required to submit federal unemployment tax payments quarterly and submit an annual return. The federal government does not directly provide benefits to unemployed individuals, although in periods of high unemployment, the federal government can fund state programs through extended or emergency benefits.

<table>
<tr><th>Statute / Regulation</th><th>Requirement</th></tr>
<tr><td></td><td>Employers are taxed on wages paid to employees, up to an annual limit or wage base. The federal unemployment taxable wage base is $7,000. All amounts paid that are greater than the wage base are exempt from federal unemployment tax, although most states and other jurisdictions have higher wage bases. The wage base can include wages paid by a predecessor employer. Taxable wages include most types of payments to an employee by an employer directly or indirectly, such as:

• hourly wages;
• salaries;
• commissions;
• bonuses;
• tips reported to the employer; and
• various taxable benefits.

In other words, the FUTA tax rate is 6%, and the tax applies to the first $7,000 an employer pays to each employee as wages during the year.

Michigan: Employers must fill out Unemployment Insurance Agency forms online for each employee to enable deductions for unemployment benefits. Reports must be made quarterly by the following dates:

• First Quarter - April 25;
• Second Quarter - July 25;
• Third Quarter - October 25; and
• Fourth Quarter - January 25.

Employers must create an online Michigan Web Account Manager (MiWAM) account to make their quarterly payment.

Instructions on creating and managing your MiWAM account can be found <u>here</u>.

A required Unemployment Insurance poster can be found <u>here</u>.</td></tr>
<tr><td>Wage Theft Prevention Notice</td><td>Federal: The FLSA does not require that employers provide written or oral notice to newly hired employees or periodically thereafter regarding such information as their wage rate or salary and exempt/non-exempt status. It is recommended that advance written notice is nevertheless provided.

Michigan: There are no Michigan laws regulating notice to applicants/newly hired employees of wage theft prevention at the time of their hire. Employers are advised to comply with federal laws regulating notice of wage theft prevention where applicable.</td></tr>
</table>

Statute / Regulation	Requirement
Other State Notice Requirements at Time of Hire Mich. Comp. Laws § 408.1011 Mich. Comp. Laws § 408.1014	**Michigan:** Michigan law requires employers to post the following workplace notices: Michigan's required Safety and Health Protection on the Job poster can be found *here*. Employers with hazardous chemicals in their workplace must post Safety Data Sheet Location posters. The required posters can be found *here* and must be posted together.
New Hire Reporting Programs 42 U.S.C. Part D (Child Support and Establishment of Paternity).	**Federal:** The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996, known as welfare reform, requires all employers to report certain information on their newly hired employees to a designated state agency for the purpose of enforcing the support obligations owed by noncustodial parents to their children and the spouse (or former spouse) with whom such children are living, locating noncustodial parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available to all children for whom such assistance is requested. The New Hire Reporting Program requires all states to establish the minimum federal new hire reporting requirements; however, states may require more than the federal minimum. Under the minimum federal new hiring reporting requirements, each employer must furnish to the Directory of New Hires of the State in which a newly hired employee works, a W-4 form or equivalent that contains the name, address, and social security number of the employee, the date services for remuneration were first performed by the employee, and the name and address of, and identifying number assigned under section 6109 of the Internal Revenue Code of 1986 to the employer. An employer that has employees who are employed in two or more States and that transmits reports magnetically or electronically may comply by designating one State in which such employer has employees to which the employer will transmit the new-hire report described above, and transmitting such report to such State. Any multi-state employer that elects a single state to transmit reports to shall notify the Secretary of the Department of Health and Human Services in writing as to which State such employer designates for the purpose of sending reports.

Statute / Regulation	Requirement
	Michigan: Employers must report newly hired and returning employees within twenty (20) days after being hired or rehired or returning to work. A form listing the information employers must report can be found *here*. Employers must submit to the Michigan New Hires Operations Center new hire information for newly hired employees (or employees rehired after 60 consecutive days of nonemployment*) who reside or work in Michigan to whom the employer anticipates paying earnings. Employers must report newly hired or returning employees to the New Hires Operations Center. All new hires and employees returning after 60 consecutive days of nonemployment must be reported. This includes **all** new hires and returning employees. There is no exception to new hire or returning employee reporting. Even an employee who works only one day and is terminated prior to the 20-day filing deadline must be reported. *Employees returning to work after 60 days of nonemployment includes rehired employees as well as employees who remained on the payroll but had a gap in service such as seasonal employees, teachers, and any other employees who have 60-day gaps in employment. Employers must submit to the Michigan New Hires Operations Center new hire information for applicants/ newly hired employees who reside or work in Michigan to whom the employer anticipates paying earnings by mail to the Michigan New Hire Operations Center, P.O. Box 85010, Lansing, MI 48908-5010, by facsimile to the Michigan New Hire Operations Center at (877) 318-1659, or submitted online by creating an employer account *here*. All new hires and employees returning after 60 consecutive days of nonemployment must be reported. This includes **all** new hires and returning employees. There is no exception to new hire or returning employee reporting. Even an employee who works only one day and is terminated prior to the 20-day filing deadline must be reported to the New Hire Operations Center in the same manner as all other employees. Employees returning to work after 60 days of nonemployment includes rehired employees as well as employees who remained on the payroll but had a gap in service such as seasonal employees, teachers, and any other employees who have 60-day gaps in employment.

Statute / Regulation	Requirement
	In addition to the New Hire Reporting Form, employers must submit the new hire's federal Form W-4. If an employer has multiple newly hired employees, and would like to submit a printed list rather than multiple individual forms, the employer may choose to do so. If the employer submits a list of newly hired employees, said list must contain all of the information required in the New Hire Reporting Form for each newly hired employee, be in at least ten-point font size, and must have the employer's name, FEIN, and address clearly displayed at the top of the list. *Subscribers to the state compliance materials package can find a template New Hire Reporting Form here.*
Restrictive Covenant Law (Pre-Hire)	**Federal:** Restrictive covenants are limitations placed on an employee's conduct by an employer commonly in employment contracts that are to remain in force after their employment has ended, such as a prohibition on an employee from competing against the employer within a particular geographic area for a specified period of time or a confidentiality agreement preventing the employee from disclosing or using the employer's proprietary or confidential information. There is no federal law governing restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests after the employee's employment is terminated depends on applicable state law and the type of relationship or covenant involved, among others. These agreements generally need to be narrowly tailored to state law and the specific operations of the business.

Statute / Regulation	Requirement
	However, employers should note that the General Counsel for the National Labor Relations Board ("NLRB") released a memorandum on May 30, 2023, that discourages the use of non-compete agreements for most low and middle wage workers who lack access to trade secrets or other protectible interests, because, according to the General Counsel for the NLRB, they likely violate Section 8(a)(1) of the National Labor Relations Act by chilling an employee's right to engage in Section 7 activity. The NLRB's memorandum acknowledges that these agreements may be allowed if they are, "narrowly tailored to special circumstances justifying the infringement on employee rights" or where they, "clearly restrict only individuals' managerial or ownership interests in a competing business, or true independent contractor relationships." It is unlikely the agreement would be considered reasonable in state jurisdictions that have declared the agreements unenforceable. Most notably, simply having an agreement or provision in an agreement could be a violation of the NRLA even if the employer does not try to enforce the agreement/provision. Employers looking to implement a non-compete agreement or employers that currently have non-compete agreements in place are encouraged to consult with employment counsel.
Mich. Comp. Laws § 445.774a	**Michigan:** An employer may obtain an employment agreement that protects the employer's reasonable competitive business interests and expressly prohibits the employee from engaging in employment or in a line of business after termination of employment, provided the agreement is reasonable as to its duration, geographical area, and the type of employment or line of business. The standard for reasonableness of geographic limitations is whether the limitations are no greater than reasonably necessary to protect the employer's legitimate business interest. The scope of activities must be limited to those actually performed by the employee. One Michigan appellate court held that even when an employee was terminated, the employee was bound to the non-compete agreement and could not work for a competitor. Reasonable non-compete agreements are enforceable whether an employee resigns or is terminated. Restrictive covenants require an employee to promise not to do something they would otherwise have been able to do. Therefore, employers need to provide an employee with "consideration" (*i.e.*, giving something of value such as a promise to do something that the employer was not otherwise obligated to do).

Statute / Regulation	Requirement
	Non-Compete agreements signed at the inception of employment have the requisite consideration required. The law is well-established that an employee's continued employment by a successor employer after a corporate buy-out is sufficient consideration for a non-compete agreement. Continued employment is also sufficient consideration if employment is at will unless the employer has a preexisting duty to continue employment, such as a contract for employment with a fixed term. We recommend a narrowly tailored Proprietary Information, Non-Solicitation Agreement, and Protective Covenants Agreement to prevent the solicitation of other employees and clients for most field staff. A non-compete agreement may be appropriate for key office staff but is generally not appropriate for most field staff. Agencies should also consider including a direct hire provision, inclusive of attorneys' fees and costs, in their client service agreement. Special rules apply if the non-compete agreement is entered into after employment has commenced. It is, therefore, best practice to have a non-complete signed at the beginning of employment. Counsel should be consulted if the non-compete agreement is entered into after the start of employment. *See also* **Restrictive Covenant Law (Post-Hire)** *Subscribers to the premium state compliance materials package can locate a template Confidentiality and Non-Solicitation Agreement for caregivers here.* *Subscribers to the base compliance materials package can locate a federal template Client Service Agreement here.* *For assistance with drafting non-compete agreements for key executives and state-compliant client service agreements, please contact us here.*
Arbitration Agreements Federal Arbitration Act (FAA), 9 U.S.C. § 1, *et seq.*	**Federal:** Arbitration is a way in which an employer and employee can agree to resolve disputes of certain matters without filing a lawsuit in court and, instead, utilize an arbitration process. Properly drafted arbitration agreements for home-based care employers are generally enforceable under the Federal Arbitration Act (FAA), a law that sets out the legislative framework for the enforcement of arbitration agreements and arbitral awards in the U.S. It is best practice to select the FAA as the governing law for arbitration provisions. One of the reasons for that is because the FAA requires that where the parties have agreed to arbitrate, they must do so in lieu of going to court.

Statute / Regulation	Requirement
Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021. H.R. 4445, 117th Cong. (2021). Mich. Comp. Laws § 691.1681.	Employers can require employees to waive the ability to pursue or participate in class-action and collective-action claims in the arbitration agreement. Sexual Harassment. Effective March 3, 2022, the Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021 went into affect amending the FAA. Pursuant to the amendment, employers are prohibited from entering into any agreement which requires arbitration for a claim involving sexual harassment or sexual assault that has not yet occurred. **Michigan:** Michigan has adopted the Revised Uniform Arbitration Act. The Act applies to arbitration agreements between employers and employees. *Subscribers to the base compliance materials package can locate a template Arbitration Agreement and related materials here.*
Membership in Labor Organizations 29 U.S.C. §§ 151-169 2023-2024R Mich. S.B. 34 (Senate Enrolled Bill)	**Federal:** Under the National Labor Relations Act, employees have the right to self-organize; form, join, or assist unions; bargain collectively through representatives of their own choosing; and engage in other concerted activities for collective bargaining purposes and other mutual aid or protection. They also have the right to refrain from these activities, except to the extent such right is limited by a union security agreement. **Michigan:** Michigan law prohibits an employer from requiring an employee to be a member of a labor organization or from requiring an employee to resign from a labor organization as a condition of obtaining or continuing employment. In 2012, Michigan passed a right-to-work statute that prohibited anyone from forcing employees to join or financially support a labor union as a condition of employment. Specifically, Michigan's right-to-work statute prohibited the following of employees to obtain or continue employment: • Refrain from or resign from membership/affiliation, or financial support of a labor union; • Become or retain a member of a labor union; • Pay any dues, fees, or other charges to a labor union; and • Pay a charitable organization or other third part the equivalent of dues, fees, or other charges that are required to be represented by a labor union.

Statute / Regulation	Requirement
	However, on March 24, 2023, the Michigan governor signed into law legislation, which repealed the right-to-work law for private-sector employees. The new legislation legalizes union security clauses in collective bargaining agreements that allow employees to be forced to pay dues, fees, assessments, or expenses in support of labor unions and allow unions to force employers to discharge employees who do not comply. Additionally, the new legislation makes it unlawful for a local municipality to pass any right-to-work ordinances or otherwise prohibit or limit any agreement requiring employees to pay dues or service fees to a labor union as a condition of employment. The new legislation went into effect on March 30, 2024 and can only be repealed by a constitutional amendment, new legislation, or a court decision.

DURING EMPLOYMENT

Statute / Regulation	Requirement
Personnel Files Mich. Comp. Laws § 423.501 et. seq.	**Federal:** There are no federal laws requiring employers to give employees access to personnel files. Employers are advised to comply with state laws regulating employee access to personnel files where applicable. **Michigan:** If an employer employs four (4) or more employees, then its current employees have the statutory right to access their personnel record. An employee may review their personnel record after submitting a request in writing. Employees have the right to review their personnel record up to two (2) times per year. While the employer must allow the employee a private review of their personnel records at a location within the employer's place of business (or reasonably close thereto) during normal office hours, the employer is not required to excuse the employee from regular work hours to review their record. If the employee is unable to review the personnel record at the employer's offices, then the employer must mail a copy of the personnel record to the employee. An employer may charge the employee for the actual cost of duplicating the personnel file. There is no requirement to permit former employees or an employee's representative access to personnel records. A "personnel record "means a record kept by the employer that: 1. identifies the employee;

Statute / Regulation	Requirement
Mich. Comp. Laws § 423.452	2. is or may be used to determine the employee's qualifications for employment, promotion, transfer, additional compensation, or disciplinary action; and 3. includes records in the possession of a third party who has a contract with the employer to maintain personnel records. Personnel record does *not* include: 1. employee references supplied to the employer if the identity of the person making the reference would be disclosed; 2. materials relating to the employer's staff planning with respect to more than one employee, including salary increases, management bonus plans, promotions, and job assignments; 3. medical reports and records made or obtained by the employer if the records or reports are available to the employee from the doctor or medical facility; 4. information of a personal nature about a person other than the employee, if disclosure of the information would constitute a clearly unwarranted invasion of privacy; 5. information that is kept separately from other records and that relates to an investigation by the employer of criminal activity that might result in loss or damage to the employer's property or disruption of the employer's business; 6. records limited to grievance investigations that are kept separately; 7. records maintained by an educational institution which are directly related to a student and are considered to be education records; or 8. records kept by an executive, administrative, or professional employee that are kept in the sole possession of the maker of the record, and are not accessible or shared with other persons. However, such a record concerning an occurrence or fact about an employee may be entered into a personnel record if entered not more than six months after the date of the occurrence or the date the fact becomes known. For example, if a manager makes a note of their direct report's performance for the purpose of record keeping in preparation for an annual review, that note will not be part of the employee's personnel file unless that manager shares that note with colleagues or adds it to the employee's personnel file within six months of making the note.

Statute / Regulation	Requirement
	An employer may not gather or keep records of an employee's associations, political activities, publications, or communications of non-employment activities, unless the information is submitted in writing or authorized in writing by the employee to be kept or gathered. In other words, employers may not record activities or actions such as attendance at a political rally or protest, blogging, posting, "liking" online content, publishing or disseminating written content outside of working hours, or participating in any activities unrelated to work without the express written consent of the employee. For more information on accessing employees' social media accounts, *see* **Electronic Monitoring**. If an employer has reasonable cause to believe that an employee is engaged in criminal activity that may result in loss or damage to the employer's property or disruption of the employer's business operation, and the employer is engaged in an investigation, the employer may keep a separate file with related information. Upon completion of the investigation or after two years, whichever comes first, the employee must be notified of the investigation. Michigan law does not specify the manner in which the employer must notify the employee (verbally or in writing), nor does it give a deadline by which the employer must notify the employee of a completed investigation. For best recording practices, and to ensure clarity in communication, it is recommended that the employer notify the employee in writing of its investigation and its results. Upon completion of the investigation, if no disciplinary action is taken, the employer must destroy all records of the investigation. Employers may disclose information in an employee's personnel file to prospective employers if the information is not false or misleading, disclosed with a reckless regard for the truth, or prohibited by law such as medical information, criminal background checks, or sensitive information such as Social Security numbers. Sensitive information must be redacted prior to disclosing a personnel file to prospective employers. If an employer chooses to disclose the contents of an employee's personnel file to an individual outside of the employer's organization or part of a labor organization representing the employee, such as a prospective employer, the employer must provide advanced written notice to the employee prior to disclosure. Michigan law does not specify how much notice of time an employer must give to its employee prior to disclosing that employee's personnel record, but it is best practice to allow sufficient time for the employee to actually receive notice prior to disclosure. For example, if the advance notice is by U.S. mail, it may be practicable to allow 3-5 business days for the employee to receive their advance notice before disclosing the personnel file to a third party.

Statute / Regulation	Requirement
	Disputes Over Personnel Files. If an employee disagrees with information in their personnel file, the employee and employer may agree to remove or correct the information. If they cannot agree, the employee may submit a written statement explaining their position. The statement must remain in the personnel file as long as the original information is in the file and be included in any disclosure to a third party. The employee dispute statement may not exceed five pages of 8½ by 11-inch paper. *Subscribers to the premium state compliance materials package can locate [Personnel File FAQs](), [Access to Personnel Files Policy](), and a [Social Security Privacy Policy]() compliant with state law.*
Biometrics Mich. Comp. Laws § 37.1202.	**Federal:** Biometric privacy laws and regulations generally require businesses to secure consent for the collection of biometric information or biometric identifiers, as well as track its use and regulate its retention and destruction. There currently is no federal biometric privacy law. **Michigan:** Employers are barred from requiring applicants or employees to take a genetic test or provide genetic information. Applicants or employees may voluntarily provide genetic information if it relates to health and safety in the workplace.
Electronic Monitoring 29 U.S.C. §§ 2510 – 2523 Mich. Comp. Laws § 37.273 - 37.278	**Federal:** Under the Electronic Communications Privacy Act, employers cannot acquire unauthorized access to or disclose or use certain electronic communications. Title I of ECPA, known as the Wiretap Act, prohibits interception of electronic communications while in transit absent a court order or the consent of a participant to such communications. Title II of ECPA, the Stored Communications Act, prohibits unauthorized access and use of electronic communications when they are no longer in transit. **Michigan:** Employers must not request access to an employees' personal internet accounts. An employer is prohibited from taking any action which will penalize an employee for their failure to disclose information to give an employer such access.

Statute / Regulation	Requirement
	If an employer provides its employees with computers, cellular phones, or other electronic devices, it may monitor, review, or access these devices to ensure that the employee has not committed work-related misconduct such as disclosing confidential information to outside parties, accessing restricted or inappropriate content, time theft, or breaching of a duty of loyalty to the employer. Employers may monitor company-provided devices to ensure the employee has not accessed prohibited websites. Employers may also monitor or review online activity of employee-owned devices while the employee is using the employer's network. An employer may request or require disclosure of information from current employees, such as login credentials, passwords, or a complete list of accounts used by the employee, to gain access to or operate an (1) electronic communications device paid for by the employer or (2) account or service provided by the employer or used for the employer's business. An employer may discipline or discharge an employee for disclosing the employer's proprietary, confidential, or financial information through the employee's personal internet account without authorization. Employers may investigate employees' activities on their personal internet accounts to ensure employees have not violated any laws, committed workplace misconduct, or disclosed confidential data.
Drug and Alcohol Testing of Current Employees Drug-Free Workplace Act 41 U.S.C. §§ 81, *et seq*. Mich. Comp. Laws §§ 37.1211(a); 750.354(a).	**Federal:** There are no federal laws prohibiting drug and alcohol testing of current employees. Employers are advised to comply with state laws regulating drug and alcohol testing of current employees where applicable. The Drug-Free Workplace Act of 1988 only applies to federal grant recipients of any size and federal contractors with a contract for more than $100,000. Unless a federal grant recipient or a federal contractor with a contract for more than $100,000, home-based care employers are not required by federal law to adopt a drug-free workplace policy or establish a drug-free awareness program. However, an employer may elect to do so in an effort to promote workplace safety, deter employee's illegal drug use, and diminish employee absenteeism and turnover. **Michigan:** Employers may create and enforce policies with respect to the use of alcohol and/or illegal drugs. If employers request a drug test for employees returning from a leave of absence, the employer must pay for the testing. Note that some states have drug and/or alcohol testing requirements specifically for certain caregiver positions within the home-based care industry. Subscribers should review the state law licensing guides available on POSH to determine any unique requirements applicable to their employee base. *See also* **Drug and Alcohol Testing of Applicants**

Statute / Regulation	Requirement
	Drug and Alcohol testing programs vary significantly based on employer preferences and choices and should be tailored to each employer's needs. For assistance in drafting a program and policies compliant with state law, please contact us here.
Cannabis Laws 21 U.S.C. §§ 811-12; 841, *et seq*. Mich. Comp. Laws §§ 333.26427; 333.27954. *Braska v. Challenge Manufacturing Co.*, 307 Mich. App. 340 (2014).	**Federal**: It is illegal under federal law to possess, sell, or use cannabis. Employers are not responsible for policing federal law, however, and are, therefore, advised to comply with applicable state law. **Michigan:** While Michigan has approved the use of cannabis for medicinal purposes, employees may not undertake any task under the influence of cannabis, when doing so would constitute negligence or professional malpractice; employers are not required to accommodate the ingestion of cannabis in any workplace or any employee working while under the influence of cannabis; and it is not a violation of public policy or disability accommodation if an employer terminates an employee for authorized cannabis use. Even if an employee uses cannabis for approved medicinal purposes, employers are permitted to implement and enforce a workplace drug policy including prohibitions against working while under the influence of cannabis. Furthermore, employers can refuse to hire, discharge, discipline, or otherwise take adverse action against a person with respect to hiring, tenure, terms, conditions, or privileges of employment because that person violated a workplace drug policy or was working while under the influence of cannabis even if that person has been approved to use cannabis for medicinal purposes. If an employee is terminated for cannabis use, they have been approved for medicinal cannabis use, and the testing leading to a positive result was due to medicinal use outside of working hours, then the employee will likely receive unemployment benefits. There is no Michigan or Federal law prohibiting discriminating against medical or recreational cannabis users. *Drug and Alcohol testing programs vary significantly based on employer preferences and choices. For assistance with developing a testing program and drafting policies compliant with applicable law, please contact us here.*
Domestic Workers' Bill of Rights	**Federal:** Currently no federal domestic worker bill of rights law exists. A national domestic workers' bill of rights was re-introduced to Congress in 2021 but currently has not been codified into law. Domestic worker bills of rights laws often exist at a state or municipal level. **Michigan:** There are no laws that implement a Domestic Worker Bill of Rights. Employers are advised to comply with federal laws regulating domestic worker rights where applicable. *See also* **Fair Employment Practices Protections**

<table>
<tr><th>Statute / Regulation</th><th>Requirement</th></tr>
<tr><td>Minimum Wage

29 U.S.C. § 206; 29 U.S.C. § 218(a).

Mich. Comp. Laws §408.934.</td><td>Federal: The regular rate of pay an employer pays to a non-exempt employee cannot be less than the minimum wage. Aside from exceptions generally inapplicable to home care, the current federal minimum wage is $7.25 per hour for non-exempt employees.

Michigan: The state’s hourly minimum wage increase schedule is:
$10.33 on January 1, 2024;
$10.56 on January 1, 2025;
$10.80 on January 1, 2026;
$11.04 on January 1, 2027;
$11.29 on January 1, 2028;
$11.29 on January 1, 2029;
$11.54 on January 1, 2030;
$11.79 on January 1, 2031; and
$12.05 on January 1, 2032.
NOTE: The Michigan Court of Claims ruled on July 19, 2022, that the public Act creating the state's current minimum wage schedule is unconstitutional. The minimum wage schedule establishing a $12 hourly minimum wage rate for nontipped employees and a $9.60 hourly cash wage for tipped employees effective January 1, 2022, was in effect pending appeals. The Court stayed enforcement of this Order until February 19, 2023, while reviewing the appeal. The Court ruled on January 26, 2023, that the public Act was constitutional and as such, the above schedule is the applicable one. On June 21, 2023, the Michigan Supreme Court agreed to decide this case.

If the Supreme Court overturns the most recent ruling, Michigan’s hourly minimum wage rates schedule will be:
$10 from January 1, 2019, to December 31, 2019;
$10.65 from January 1, 2020, to December 31, 2020;
$11.35 from January 1, 2021, to December 31, 2021;
$12 from January 1, 2022, to December 31, 2022; and
$13.03 per hour for 2023 and setting minimum wage increases adjusted to the consumer price index each year beginning in 2023.
Retroactive payments to affected employees to comply with this schedule is unknown at this time.</td></tr>
</table>

Statute / Regulation	Requirement
	The exemptions from the state's minimum wage and overtime provisions are not generally applicable to the home care industry. *A required Minimum Wage poster can be found here.* *Subscribers to the premium state compliance materials package can locate a template Minimum Wage policy compliant with state law here.*
Overtime 29 U.S.C. § 207. Mich. Comp. Laws §§ 408.414a; 408.420. Mich. Comp. Laws § 408.934a(1).	**Federal:** An employer that requires or permits a non-exempt employee to work overtime is generally required to pay the employee premium pay for such overtime work. Under the FLSA, employers must pay non-exempt employees one-and-a-half times their regular rates of pay for all hours worked over 40 in a workweek. Where a non-exempt employee in a single workweek works at two or more different types of work for which different straight-time rates have been established, under federal law, employers may use the weighted average or, under specified conditions, the rate in effect at the time the overtime is worked of such rates to determine the regular rate for that workweek. State law may differ, and in that case, an employer should follow the law that provides the non-exempt employee with a greater benefit. Generally, the weighted average is the recommended method of calculating overtime under federal law. **Michigan**: The overtime rate is not less than 1.5 times the employee's regular rate of pay for any work in excess of 40 hours in a workweek. Generally speaking, Michigan overtime requirements do not apply to FLSA-covered employers or employees that are exempt from the FLSA's minimum wage requirements. However, exceptions to the rule may apply. Michigan's coverage carve-out is complicated. When determining whether Michigan law is applicable, employers should consult knowledgeable counsel to discuss coverage parameters and whether and how the carve-out applies. Further, Michigan's overtime requirements do not apply to: • an employee employed in a *bona fide* executive, administrative, or professional capacity or • an employee who is not subject to the state's minimum hourly wage provisions. Unlike some other states' laws, Michigan law does not contain an express exemption for commissioned sales employees or for outside sales employees. *See also* **Overtime Exemptions**. *Subscribers to the base compliance materials package can locate a federal template Overtime Policy here.*

Statute / Regulation	Requirement
Overtime Exemptions 29 C.F.R. § 541.	**Federal:** There are numerous exemptions from the FLSA overtime requirements, including exemptions for Executive, Administrative, Professional, Computer and Outside Sales Employees. The following exemptions are those most relevant to the home care industry. Executive Exemption. To qualify under the Executive Exemption, an employee must be "employed in a bona fide executive capacity," which means any employee: (1) Compensated on a salary basis at a rate of not less than $684 per week, exclusive of board, lodging or other facilities; (2) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; (3) Who customarily and regularly directs the work of two or more other employees; and (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight. The term exemption for an "employee employed in a bona fide executive capacity" also applies to any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The minimum salary requirements are not required for business owners as described here. Administrative Exemption. To qualify under the Administration Exemption, an employee must be "employed in a bona fide administrative capacity," which means any employee: (1) Compensated on a salary or fee basis pursuant at a rate of not less than $684 per week, exclusive of board, lodging or other facilities; (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

Statute / Regulation	Requirement
	Professional Exemption. To qualify under the Professional Exemption, an employee must be "employed in a bona fide professional capacity," which means any employee: (1) Compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging or other facilities; and (2) Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Please note that Registered Nurses, Physical Therapists, Occupational Therapists and Medical Social Workers generally qualify as meeting the professional exemption under federal law when their compensation and duties are structured in compliance with these regulations. Pay per visit programs are commonly used to compensate these type of clinicians and are often challenged based on alleged non-compliance with fee basis regulations. Therefore, any pay-per-visit compensation program should be carefully reviewed by qualified counsel before adoption. *See* **Pay Per Visit Compensation** section below for more information. Highly Compensated Exemption. Highly compensated employees performing office or non-manual work and paid total annual compensation of \$107,432 or more (which must include at least \$684 per week paid on a salary or fee basis) are exempt from the FLSA if they customarily and regularly perform at least one of the duties of an exempt executive, administrative or professional employee identified in the standard tests for exemption. Outside Salesperson Exemption. To qualify under the Outside Sales Exemption, an employee must be "employed in a bona fide capacity of outside salesperson," which means any employee: (1) Whose primary duty is: (i) making sales within the meaning of section 3(k) of the Fair Labor Standards Act, which include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property, or

Statute / Regulation	Requirement
Mich. Comp. Laws § 408.420. Mich. Comp. Laws § 408.940(1)(b) Mich. Comp. Laws §§ 408.934a(4)(e), 408.940(4) Mich. Comp. Laws § 408.940(3) Mich. Comp. Laws § 408.940(5) Mich. Comp. Laws § 408.934a(4)(d)	(ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and (2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty. The above salary requirements do not apply to the Outside Salesperson Exemption. **Michigan:** Employers covered by the FLSA should follow FLSA standards for the executive, administrative, professional, and outside sales exemptions, including the federal salary basis amount of $684 per week ($35,568 annually). Employers only covered by Michigan's overtime law (*i.e.*, not subject to the FLSA) may not use the outside sales exemption. <u>Other Exemptions</u>: • An employee who is exempt from the minimum wage requirements of the federal Fair Labor Standards Act. • Certain agricultural workers. • Employees of summer camps for not more than four months. • Members of regional, national, or international junior ice hockey league teams who are 16 years of age or older but less than 21 years of age, in their capacity as ice hockey players. Employees of an amusement or recreational establishment operating for up to seven calendar months in a calendar year are exempt from the overtime requirements of the IWOWA. *See also* **Overtime** *For assistance with determining whether any position or employee may be properly classified as exempt from minimum wage or overtime, please contact us here.*
Pay Per Visit Compensation 29 C.F.R. § 78.111(a)	**Federal:** Under a non-exempt pay per visit ("***PPV***") compensation model, non-exempt clinicians are compensated on a flat visit rate basis for all visit related activities and paid a separate administrative rate for non-visit work, such as administrative activities, case conferences, or training. Generally, travel time and visit related charting time can be considered part of the visit rate (and, thus, the time associated with those activities are compensated by the visit rate) even though these activities (such as charting time) can occur outside of the face-to-face visit time with the patient/client. An agency's PPV policy should specifically define what work activities are included within the visit rate.

Statute / Regulation	Requirement
29 C.F.R. § 778.109	Under the FLSA, non-exempt PPV employees also are eligible for overtime pay and must be paid at the applicable overtime rate for all hours worked over 40 in a workweek, or as state or local law otherwise requires. As such, the non-exempt PPV employee must record all time spent on work activities, even if those activities are considered to be compensated by the visit rate. Further, to the extent that PPV non-exempt employees have already been paid straight time pay for all hours worked through their visit and non-visit rates of pay, which would include those compensable work activities included in the flat rate, the employer will only be obligated to pay an additional half-time rate for overtime hours under the FLSA. It is important that the agency have the particulars of the PPV program spelled out clearly in an agreement with the clinician. The half-time rate is calculated on a weekly basis, after the company determines the PPV employee's regular rate of pay. Generally, for employees paid on the basis of a job rate, a day rate, a piece rate, or commissions, all compensation included in the regular rate for the week should be divided by the total number of hours worked to determine the regular rate. Half of the resulting hourly rate (i.e., the regular rate) is the additional overtime premium owed for each hour in excess of 40 hours worked during the workweek. To provide an illustration, assume a non-exempt PPV employee is paid $25.00 per visit, each visit lasts two hours, and she performs five visits a day, five days for one workweek; she is entitled to receive $750.00 for the week for straight time wages. However, because she works 50 hours in the workweek, her regular rate must be calculated to determine additional overtime pay necessary for the 10 hours over 40 she worked that week. Her regular rate is calculated as follows: $750.00/50 = $15.00 an hour, so her overtime rate is $7.50 per overtime hour calculated on an additional half-time basis. Thus, she is entitled to an additional $75.00 in overtime compensation ($7.50 x 10 hours). Her total compensation for the week is $825.00 for her straight and overtime wages under the PPV methodology. **Michigan:** There are no Michigan laws regulating pay per visit compensation. Employers are advised to comply with federal laws regulating pay per visit compensation where applicable. *For assistance with determining whether any position or employee may be compensated using the Pay Per Visit method or assistance with setting up a PPV program compliantly including the appropriate calculation of overtime using such method, please contact us here.*

Statute / Regulation	Requirement
Orientation Time FLSA, 29 U.S.C. § 201, *et seq*. *See also* 29 C.F.R. Part 785 – Hours Worked U.S. Dep't of Labor, Wage & Hour Div., Field Assistance Bulletin No. 2018-2 (Jan. 5, 2018), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fab2018_2.pdf FLSA, 29 U.S.C. §§ 206, 207	**Federal:** Generally, orientation time for non-exempt employees is compensable when it involves instructing a non-exempt employee about the employer's policies and procedures, the employer's expectations, or involves the performance of any productive work. The FLSA establishes narrow parameters for trainee orientation periods that can be legally unpaid, largely limiting those periods to only those that resemble vocational programs that benefit the caregiver population at large, rather than more than traditional, agency-specific orientation programs. In short, under the "primary beneficiary test" test, courts have examined the "economic reality" of the intern-employer relationship to determine which party is the primary beneficiary of the relationship. Employers should consult with qualified legal counsel before treating any orientation time as unpaid. Employers may pay employees at a lower base rate during orientation if the pay rate complies with applicable minimum wage and overtime requirements. Employers should document the applicable pay rate via a basic offer letter, compensation agreement, rate chart or some other written method. Under the FLSA, the Department of Labor may view as non-compensable time associated with certain pre-hire paperwork such as filling out an application and standard tax forms, if it is routine, not specific to the employer, can be completed at the individual's convenience, and is for the benefit of the employee rather than the employer (e.g., direct deposit, benefits enrollment, standard tax forms, etc.) and is a condition of employment. Making completion of the new hire paperwork a condition of employment may render such individuals prospective employees rather than actual employees. An employer should seek legal counsel before electing not to pay for time spent completing pre-hire paperwork. **Michigan:** There are no Michigan laws regulating orientation time. Employers are advised to comply with federal laws regulating orientation time where applicable. *Subscribers to the premium state compliance materials package can locate template Exempt Offer and Non-Exempt Offer letters.*
Training Time FLSA, 29 U.S.C. § 201, *et seq*. 29 C.F.R. §§ 785.27 – 785.32	**Federal:** Generally, a non-exempt employee's attendance at voluntary lectures, meetings, training programs, and similar activities do not need to be counted as compensable work time under the FLSA and its regulations, if all of the following four criteria are met: 1. attendance is outside the employee's regular working hours; 2. attendance is in fact voluntary; 3. the course, lecture, or meeting is not directly related to the employee's job; and

Statute / Regulation	Requirement
U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter 2020-15 (Nov. 3, 2020), https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2020_11_03_15_FLSA.pdf	4. the employee does not perform any productive work during such attendance. The FLSA's regulations and the Department of Labor have recognized two exceptions where training time may be excluded from working time even though it relates to the employee's job activities: (a) where the employer establishes - for the benefit of employees - a program of instruction (available outside of working hours) which corresponds to courses offered by independent *bona fide* institutions of learning; and (b) where the employee on their own initiative attends an independent school, college or independent trade school outside work hours. Thus, it remains essential that attendance occurs outside of regular work hours for it to be unpaid. Whether a course satisfies continuing education requirements is not material to these exceptions. Certain state mandated training for certifications that is transferrable to other agencies may not be compensable (even if it occurs while the employee is employed) if such training occurs outside of employees' regular working hours and employees do not perform any productive work during such training. However, this exception generally does not apply where the state requires employers to provide training as a condition of the employer's license to remain open for business. Accordingly, an attorney should be consulted before making a final determination that time spent attending a training program is not compensable and documenting the employee's consent and voluntary nature of the training via written acknowledgment is recommended. Likewise, employers who treat any category of training time as unpaid should require employees to sign an acknowledgment establishing that all of the requirements to do so have been met. **Michigan:** There are generally no Michigan laws regulating training time generally. Employers are advised to comply with federal laws regulating training time where applicable.
Mich. Comp. Laws § 408.934b(1).	Employers may pay a training wage of $4.25 per hour for the first 90 days of employment for new, non-exempt employees under the age of 20. *Subscribers to the base compliance materials package can locate a template Training Policy and Acknowledgment here.* *For assistance with advice concerning the compensability of a specific training program, please contact us here.*

Statute / Regulation	Requirement
On-Call Time 29 C.F.R. § 785.17. U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #22 (July 2008), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs22.pdf U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter 2018-1 (Jan. 5, 2018), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2018_01_05_01_FLSA.pdf U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter 2008-14NA (Dec. 18, 2008), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2008_12_18_14NA_FLSA.pdf	**Federal:** Generally, a non-exempt employee who is required to remain on-call on the employer's premises is working while "on-call" under the FLSA. An employee who is required to remain on-call at their home, or who is allowed to leave a message where the employee can be reached but is otherwise relatively free to engage in personal pursuits, is not working (in most cases) while on-call. Additional constraints on the employee's freedom could require this on-call time to be compensated. A non-exempt employee who is called to work during an on-call shift must record and be paid for that work time. If a non-exempt employee's on-call working time occurs after working 40 hours in the week, (or otherwise during overtime hours based on applicable state law), the non-exempt employee must be paid overtime at the applicable regular rate, which includes any on-call premium paid to the non-exempt employee. An agency should seek legal counsel regarding specific on-call situations. **Michigan:** There are no Michigan laws regulating on call time Employers are advised to comply with federal laws regulating on call time where applicable. *Subscribers to the base compliance materials package can locate a template On-Call Policy for Exempt Employees, On-Call Policy for Non-Exempt Employees, and an On-Call Time Log.*
Travel Time U.S. Dep't of Labor, Wage & Hour Div., Domestic Service Final Rule Frequently Asked Questions (FAQ), *https://www.dol.gov/agencies/whd/direct-care/faq;*	**Federal:** Generally, employers are not required to pay for the time non-exempt employees spend on non-work activities occurring before they perform the first principal work activity of the workday or after they perform the last principal work activity of the workday. As such, travel from home to the first work site of the day (i.e., the non-exempt employee's normal commute), or travel from the last work site to home, is generally not compensable in an ordinary situation.

Statute / Regulation	Requirement
29 C.F.R. §§ 785.35, 785.38; Portal to Portal Act, 29 U.S.C. §§ 251-262.	A non-exempt employee who travels from home before the employee’s regular workday and returns to their home at the end of the workday is engaged in ordinary home-to-work travel which is a normal condition of employment and is typically not worktime unless the commute time exceeds an ordinary commute. This is true whether the employee works at a fixed location or at different job sites. Normal travel from home-to-work is not working time and does not need to be paid by the employer. If a non-exempt employee travels from one job site to another during the non-exempt employee’s regular workday to perform work for their employer, all the intra-day travel time is considered compensable worktime and must be compensated. For example, if a caregiver is required to pick up supplies at the office prior to conducting visits, all the caregiver’s time spent at the office picking up supplies and then traveling from the office to client homes is work travel time and compensable. The DOL has advised that, where the travel is not direct from job site to job site, such that the non-exempt employee is relieved from duty for a period sufficient to engage in purely personal pursuits, only the time that would have been necessary to travel directly from the first job site to the second job site is considered compensable travel time. The U.S. DOL’s Frequently Asked Questions for the Domestic Service Final Rule provides the following example: > Tiffany is a direct care worker who is employed by Handy Home Care Agency. She provides services to two of the agency’s clients, Mr. Jackson, from 9:00 A.M. to 11:30 A.M., and Mr. Smith, from 2:00 P.M. to 6:00 P.M. Tiffany drives to the two different worksites which are 30 minutes apart. She leaves Mr. Jackson’s home at 11:30 A.M. and goes to a restaurant for lunch, shops for herself, and then arrives at Mr. Smith’s home at 2:00 P.M. > Because Tiffany is completely relieved from duty long enough to use the time effectively for her own purposes (i.e., lunch and shopping) not all of the time is hours worked. The 30 minutes required to travel between the two homes is hours worked and, as of January 1, 2015, must be paid by the Handy Home Care Agency even though Tiffany did not travel directly between consumers.

Statute / Regulation	Requirement
	If a non-exempt employee is required to perform “principal activities” at their home immediately before or after the commute between work and home, then the non-exempt employee’s initial travel time to the first job site and/or final travel home from the last job site may be compensable if those “principal activities” are for the benefit of the employer, occur just prior to the commute, and are “integral and indispensable” to the non-exempt employee’s job. However, if the non-exempt employee is free to engage in personal pursuits before, after or during the commute time and is not expected to begin work (i.e., check emails or call clients to verify visits) immediately prior to commencing their travel to the first job site or immediately upon returning home from the last job site of the work day, then the home-to-work travel would considered “normal” home-to-work travel and does not need to be paid under the FLSA. If, however, due to work demands or other employer operations issues, the employer expects non-exempt employees to work immediately prior to traveling to the first job site of the workday and/or to re-commence work immediately upon returning home at the end of the work day, then the non-exempt employee’s travel time may be compensable under the continuous workday doctrine. Pay for the travel time may be required under the FLSA even if the non-exempt employee is not necessarily required to work immediately prior or subsequent to the home-to-work travel, but the demands of work do not provide flexibility for the caregiver to conduct the work at other times, making it more likely that the travel time after (at the beginning of the shift) or before (at the end of the shift) the work would be considered compensable under the FLSA. Employers may permissibly pay non-exempt caregivers travel time at a lower hourly rate than the other types of work they perform for the employer under the FLSA, so long as the caregiver receives at least the applicable minimum wage. **Michigan:** There are no Michigan laws regulating travel time. Employers are advised to comply with federal laws regulating travel time where applicable. *Subscribers to the base compliance materials package can locate a template Travel Time Policy here.*
Mileage/Business Expense Reimbursement 29 C.F.R. § 778.217(d) U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter 2020-12 (Aug. 31, 2020),	**Federal:** Employers need not reimburse expenses normally incurred by the employee for the employee’s own benefit. Federal law does not require employers to reimburse non-exempt employees for mileage or other business expenses, such as the use of home internet or personal cell phones for work, as long as not reimbursing employees for such expenses does not drop the non-exempt employee’s wages below the minimum wage or cut into the overtime owed to the non-exempt employee.

Statute / Regulation	Requirement
https://www.dol.gov/sites/dolgov/files/WHD/opinion-letters/FLSA/2020_08_31_12_FLSA.pdf	**Michigan:** There are no Michigan laws regulating mileage/business expense reimbursement. Employers are advised to comply with federal laws regulating mileage/business expense reimbursement where applicable.
Split Shift	**Federal:** The FLSA does not require that employers compensate non-exempt employees for any premium when their workday is divided into more than one shift (e.g., 9:00 A.M. – 1:00 P.M. and 6:00 P.M. – 10:00 P.M.). Please refer to the **Travel Time** section above for proper compensation of employees for travel time between split shifts. **Michigan:** There are no Michigan laws regulating split shifts. Employers are advised to comply with federal laws regulating split shifts where applicable.
Reporting/Show-Up Pay	**Federal: "**Show-Up Pay" laws require employers to pay some minimum amount of compensation to non-exempt employees who report to work and find that no work is available to be performed. There are no federal laws that require a minimum amount of show up pay. Employers are advised to comply with state law regulating show-up pay where applicable. **Michigan:** There are no Michigan laws regulating show up pay. Employers are advised to comply with federal laws regulating show up pay where applicable.
Predictive Scheduling	**Federal:** Predictive scheduling laws require employers to give employees advanced notice of the schedule they are expected to work within a specified time frame so that employees are able to plan for and around their scheduled work shifts. Also, a change in the schedule within the specified time frame generally results in a premium that must be paid to the affected employee. Under federal law, employers are not subject to predictive scheduling laws. Also, the FLSA does not require employers to provide advance notice or pay any premium to employees whose schedules are changed before or during their scheduled shifts. Employers are advised to comply with state or municipal law regulating predictive scheduling where applicable. **Michigan:** There are no Michigan laws regulating predictive scheduling. Employers are advised to comply with federal laws regulating predictive scheduling where applicable.

Statute / Regulation	Requirement
Live-In/Sleep Time/Meal Time 29 C.F.R. §§ 785.21, 785.22(a), 785.23.	**Federal:** Generally. A non-exempt employee required to be on duty for shifts of less than 24 hours is considered to be "working" the entire shift and the employer cannot deduct any sleep time, even if the employee is uninterrupted by work and permitted to sleep. However, *bona fide* meal periods that are uninterrupted by work and at least 30 consecutive minutes in duration can be treated as unpaid under federal law, even if the non-exempt employee cannot leave the premises during the shift. We recommend reviewing state and local law regarding meal break requirements in this regard, which can vary greatly from federal law. See **Meal Breaks** section. Live-In. Non-exempt employees providing domestic services in a private home who reside on the client's premises are live-in domestic service employees. To be considered a "live-in" under the FLSA, the non-exempt employee must meet one of the following criteria: (a) reside on an client's premises seven days a week such that the non-exempt employee has no home of their own other than the one provided by the client; or (b) live, work, and sleep on the client's premises five days a week and work 120 hours or more each week; or (c) if the non-exempt employee spends less than 120 hours working and sleeping on the client's premises, the non-exempt employee spends five consecutive days or nights each week residing on the premises. Under the FLSA, employers of live-in employees, including live-in home care workers, may exclude up to eight hours per workday of sleep time from hours worked if the parties have a reasonable agreement to exclude sleep time and the client provides private quarters in a homelike environment. In addition, this eight hours of sleep time is excludable only if the non-exempt employee is paid for at least eight hours of working time in each 24 hour period.

Statute / Regulation	Requirement
	Extended Shift. Non-exempt employees with at least one work shift spanning 24 hours at the client's home who *do not* meet the qualifications of a live-in domestic service employee as stated above (i.e., work less than five shifts or 120 hours per week) are considered "extended shift" employees rather than "live-in" employees. For extended shift employees, sleep time is generally compensable as hours worked, absent a reasonable agreement to exclude this time. With a reasonable agreement, actual sleep time up to eight hours may be excluded from work time if: (a) adequate sleeping facilities are provided; (b) the non-exempt employee can usually enjoy an uninterrupted night's sleep; and (c) all interruptions that occur during the sleep period to perform work duties are considered time worked and compensated. These off-duty, sleep time hours need not be at night, but must occur during a fixed window. When work-related interruptions prevent five hours of sleep, the entire eight hour sleep period is considered work time and must be paid. Under federal law, home care agencies that employ the caregivers must pay both live-in and extended shift non-exempt employees overtime during any work week when the live-in or extended shift non-exempt employee works more than 40 hours (and as otherwise may be required by applicable state or local law). The legal distinction between those non-exempt employees who meet the federal live-in definition above versus extended shift employees (who are assigned to at least a 24 hour shift) that do not meet this definition is paramount for purposes of determining how many non-working hours can be potentially excluded from the non-exempt employee's schedule during each 24 hour shift. Often, more flexibility exists for reducing the daily work schedule of a live-in employee to include more downtime than an extended shift employee, as long as that live-in employee is truly able to engage in normal personal activities such as eating, sleeping, entertaining, and other periods of complete freedom from all work-related duties.

Statute / Regulation	Requirement
	When certain conditions are met (and subject to jurisdictional requirements), live-in employees generally can work a daily schedule of less than 13 hours per shift under federal law without losing the ability to deduct time for *bona fide* sleeping time. However, extended shift caregivers who do not meet the live-in definition above should typically not be scheduled to work less than 13 hours per shift. A 13 hour shift may be possible if the extended shift caregiver is provided with three uninterrupted one-hour meal breaks and eight hours of uninterrupted sleeping time. Extended shift employees should not receive less than a minimum of 13 hours per 24 hour shift because attempting to deduct additional down time could break the consecutive 24 hour shift, thus resulting in the employer losing the ability to deduct additional non-working time for *bona fide* sleep periods. Also note that, certain states require that non-exempt employees be permitted to leave the client's home for the agency to treat meal periods as non-compensable. It is strongly recommended that an employer consult with qualified counsel when establishing live-in and extended shift programs due to the complex nature of these programs. **Michigan:** There are no Michigan laws regulating live-in/sleeping time. Employers are advised to comply with federal laws regulating live-in/sleep time where applicable. Thus, if an employee is required to remain on premises for meal periods, the meal period can still be treated as unpaid as long as the employee is completely relieved from duty during the meal period. *Subscribers to the premium state compliance materials package can locate template Live-In/Extended Shift Agreements and related materials that are state law compliant here.* *For assistance customizing a live-in/extended shift program for your agency, please contact us here.*
Meal Breaks 29 C.F.R. § 785.19.	**Federal:** Federal law contains no generally applicable meal period requirements for adults. As such, employers do not need to offer employees meal periods under federal law. However, uninterrupted meal periods of at least 30 consecutive minutes are not considered "hours worked" and can be unpaid for non-exempt employees if they are "duty-free." It is not necessary under federal law that a non-exempt employee be permitted to leave the premises if the non-exempt employee is otherwise completely freed from work duties during the meal period. State or municipal law may differ, and in that case, an employer should follow the law that provides the non-exempt employee with a greater benefit.

Statute / Regulation	Requirement
Mich. Comp. Laws § 409.112.	**Michigan:** There are no generally applicable rest period requirements for adult employees. The meal period may be required to be taken on the employer's premises if the employee is duty-free during that time. Employees under the age of 18 cannot work for more than five hours without at least 30-consecutive minutes for a meal break. Michigan laws are silent with respect to distinctions exempt and non-exempt employees under the age of 18 in terms of meal breaks. The wording of the statute suggests all employees under the age of 18 must be given meal breaks. *Subscribers to the premium compliance materials package can locate template Meal and Rest Breaks and Meal and Rest Breaks for Minors policies that are state compliant.*
Rest Periods 29 C.F.R. § 785.18. Mich. Comp. Laws § 409.112.	**Federal:** There are no federal laws that require rest periods for employees; however, rest periods of short duration, running from five to less than 20 minutes, are counted as "hours worked" for non-exempt employees and must be paid. State or municipal law may differ, and in that case, an employer should follow the law that provides the non-exempt employee with a greater benefit. **Michigan:** There are no Michigan laws regulating rest periods for adult employees. Employers are advised to comply with federal laws regulating rest periods where applicable. Minors under the age of 18 cannot work more than five continuous hours without a rest break of at least 30 consecutive minutes. A 30-minute break for a meal constitutes a rest break, and no separate, additional break for rest time in addition to a meal break is required. Michigan laws are silent with respect to distinctions exempt and non-exempt employees under the age of 18 in terms of rest breaks. The wording of the statute suggests all employees under the age of 18 must be given rest breaks. *Subscribers to the premium compliance materials package can locate template Meal and Rest Breaks and Meal and Rest Breaks for Minors policies that are state compliant.*

Statute / Regulation	Requirement
Lactation Breaks and Accommodation 29 U.S.C. § 207(r). FMLA, 29 U.S.C. §§ 2611(4)(A)(i), 2612(a) U.S. Dep't of Labor, Wage & Hour Division, Frequently Asked Questions (FAQ), https://www.dol.gov/agencies/whd/nursing-mothers/faq	**Federal:** Employers must provide a private place (other than a bathroom) that is shielded from view and free from intrusion from others and a reasonable amount of break time to an employee (both exempt and non-exempt) for expressing breast milk for the employee's nursing child for one year after the child's birth. Employees may use ordinary paid rest breaks and, if possible, the break time should run concurrently with meal and rest breaks already provided for the employee. If they cannot run concurrent and additional time is needed, employers are not required under the FLSA to compensate non-exempt employees as long as the employee is completely relieved of all work-related duties for the duration of the break. However, where employers already provide compensated breaks, a non-exempt employee who uses that break time to express milk must be compensated in the same way that other employees are compensated for break time. Employers are required under the FLSA to compensate nursing exempt employees for breaks taken for the purpose of expressing milk. Employers should note that this equally applies to employees who work remotely who must also be free from any employer-provided or required video system, including computer camera, security camera, or web conferencing platform, while expressing breast milk.
U.S. Dep't of Labor, Wage & Hour Division, Frequently Asked Questions (FAQ), https://www.dol.gov/sites/dolgov/files/WHD/flsa/PUMP-retail-restaurant-faq.pdf	Additionally, employers cannot hold time taken to express breast milk against employees in terms of determining whether the employee meets productivity measures or a quota. Furthermore, employers cannot require employees to make up the time they take expressing breast milk. Adding required work time to an employee's normal schedule because they are taking reasonable breaks to express breast milk could be seen as retaliation under the FLSA. Employers should note that these requirements equally apply to employees who work remotely who must also be free from any employer-provided or required video system, including computer camera, security camera, or web conferencing platform, while expressing breast milk. Employers with fewer than 50 employees are excused from the lactation accommodation and break requirements where the employer can demonstrate that complying with the nursing break time provision would impose an undue hardship. Whether compliance would be an undue hardship is determined by looking at the difficulty or expense of compliance for a specific employer in comparison to the size, financial resources, nature, or structure of the employer's business. Employers are prohibited from discriminating and retaliating against employees and applicants for exercising any rights under the Providing Urgent Maternal Protections for Nursing Mothers Act.

Statute / Regulation	Requirement
	Michigan: There are no Michigan laws regulating lactation accommodation. Employers are advised to comply with federal laws regulating lactation accommodation where applicable. *Subscribers to the base compliance materials package can locate a template Lactation Accommodation Policy that is compliant with federal law here.* *Subscribers to the premium state compliance materials package can locate a template Lactation Accommodation Policy that is state compliant here.*
Form of Payment 29 C.F.R. §§ 516.27, 531.27 – 531.35. U.S. Dep't of Labor, Wage & Hour Div., FIELD OPERATIONS HANDBOOK , §§ 30c00(a) & (b), https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-30#B30c00. Mich. Comp. Laws § 408.476	**Federal:** Wages may be paid by cash, check, direct deposit, or facilities (i.e., meals, lodging, or other). An employer who claims furnished facilities (i.e., meals, lodging or other) as wages must generally maintain the records substantiating the cost of furnishing each class of facility (such as housing, fuel, or merchandise) in any workweek that the employee is subject to the overtime requirements of the FLSA and does not receive the applicable statutory minimum wage in cash for all hours worked in that workweek. **Michigan:** Authorized Instruments. Employers may pay wages in cash, check, draft, or by direct deposit or payroll debit card. Paychecks must be payable on presentation at a financial institution or other established place of business without discount. Direct Deposit. A Michigan employer may mandate that employees receive their wages by mandatory direct deposit. With an employee's full, free, and written consent obtained without intimidation, coercion, or fear of reprisal, employers may deposit wages into the employee's bank, credit union, or savings and loan association. An employer may not charge their employee any fees or costs in connection with paying wages or establishing a process for paying wages through direct deposit. An employer or agent of an employer may require employees to receive wages through direct deposit if the employer has provided the employee with a written form that allows the employee the option to receive wages by direct deposit to the employee's account at a financial institution.

Statute / Regulation	Requirement
	Payroll Debit Card. An employer may pay wages by issuing a payroll debit card. An employer cannot issue a payroll debit card to an employee or change payment process from direct deposit to a payroll debit card without the full, free, and written consent of the employee, obtained without intimidation, coercion, or fear of discharge or reprisal for refusal to accept the payroll debit card. Employers who have paid employees via payroll debit cards on a continuous basis prior to January 1, 2005 need not obtain their employees' consent. Approved payroll debit cards must meet the following minimum criteria: 1. The debit card entitles the employee to make at least one withdrawal or transfer without charge each pay period, but not more frequently than once per week, for any amount the employee elects up to the balance accessible through the card; 2. The debit card allows no changes in fees or terms of service unless the employee has received a written notice identifying the changes at least 21 days in advance of the date that the changes take effect; 3. The debit card provides a method for the employee to make an unlimited number of balance inquiries without charge, either electronically or by telephone; and 4. The debit card is not linked to any form of credit, including a loan against future pay or a cash advance on future pay. An employer cannot require an employee to pay any fees or costs incurred by the employer in connection with paying wages or establishing a process for paying wages by direct deposit, electronic transfer, or pay card. The employer must disclose the following in conjunction with a payroll debit card: 1. the terms and conditions for use, including an itemized list of any and all fees; 2. the methods for accessing wages without charge; 3. a statement that, if the payroll debit card is used outside of the specified network of ATMs, both the payroll card issuer and the operator of the ATM may impose charges; 4. the methods to obtain free balance inquiries; 5. the employee's right to elect to change the method of receiving wages at any time; and 6. a statement that the payroll debit card does not provide access to a savings or checking account.

Statute / Regulation	Requirement
	If a payroll debit card is used, then the cardholder, not the issuer or the bank, must possess ownership of the funds. Neither the issuer nor the bank can 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: 1. a credit made to the wrong employee account; 2. a duplicate credit made to an employee account; 3. a credit that differs from the amount in the transmittal instructions; or 4. a correction. If an employer deposits wages into a pooled account accessible to an employee using a payroll debit card, the employer must 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 must be indicated on records maintained by the card issuer, the depository institution's deposit account, or a third party. *Subscribers to the base compliance materials package can locate a memorandum regarding meal and lodging wage payments for live-ins here*.
Wage Payment Schedule Mich. Comp. Laws § 408.472.	**Federal:** There are no federal laws regulating employees' wage payment schedules. Employers are advised to comply with state law regulating wage payment schedules where applicable. **Michigan**: An employer must pay its employees as follows: 1. wages earned during the first 15 days of the calendar month must be paid on or before the first calendar day of the next calendar month; and 2. wages earned during the 16th day through the last day of the calendar month must be paid on or before the 15th of the next calendar month. An employer that has established a weekly or biweekly pay cycle must pay wages on regular, recurring paydays that are on or before the 14th day following the end of the work period in which the wages are earned. An employer may establish a monthly payday if it pays its employees within 15 days after the monthly pay period ends. In the case of overtime wages earned in December, which would have been paid after the 16th of December, an employer is deemed to comply with frequency requirements if: 1. the employees receive all wages, except overtime, on or before their regularly scheduled payday; and

Statute / Regulation	Requirement
	2. all overtime wages earned during December are paid on or before the next regularly scheduled payday following the payday in which overtime would be paid otherwise. *See* **Final Wages** below for payment upon termination of employment.
Pay Stubs Mich. Comp. Laws §§ 408.417; 408.479. Mich. Admin. Code r. 408.9012.	**Federal:** There are no federal laws that require employers to provide pay stubs listing specific information to employees. Employers are advised to comply with state laws regulating employer obligations relating to pay stubs where applicable. **Michigan:** Employers must furnish each non-exempt employee at the time of payment of wages a statement showing: 1. hours worked by the employee; 2. gross wages paid; 3. the pay period for which payment is being made; and 4. a separate itemization of deductions. However, employers are not required to furnish wage statements of hours worked by an employee employed in a *bona fide* executive, administrative, or professional capacity. The law requires an employer to furnish each employee a wage statement at the time of payment, and that it be in a "retainable form," but does not further specify what form the wage statement must take. According to the state labor department, "[e]lectronic pay or wage statements are allowed, provided the employee has the ability to print out the statement at the time the wages are paid. This manner of obtaining statements must be consistent throughout the company."
Wage Transparency 29 U.S.C. §§ 157, 158(a)(1). Mich. Comp. Laws § 408.483a.	**Federal:** While employers may restrict employees from discussing their salary/wages in front of customers or while they are supposed to be working, employers may not entirely prohibit employees from discussing compensation and benefits. The National Labor Relations Act (NLRA) gives all employees the right to "engage in concerted activities," including the right to discuss their terms and conditions of employment with each other. The NLRA also makes it an unfair labor practice for an employer to deny or limit those employee rights. Based upon the above, the National Labor Relations Board (NLRB) has taken the position that employers may not prohibit employees from discussing their pay and benefits, and that any attempts to do so violate the NLRA. **Michigan:** In an effort to further wage transparency, Michigan employers cannot: 1. require, as a condition of employment, nondisclosure by an employee of their wages;

Statute / Regulation	Requirement
	2. require an employee to sign a waiver or other document which purports to deny an employee the right to disclose their wages; or 3. discharge, formally discipline, or otherwise discriminate against an employee who discloses their wages. *Subscribers to the premium state compliance materials package can locate a template Discussion of Wages policy compliant with state law here.*
Changing Paydays or Pay Rates	**Federal:** There are no federal laws regulating employer obligations to notify employees of changes to paydays or pay rates; however, it is recommended that employers provide such notice, in writing, with at least one advance pay period. Employers are further advised to comply with state laws regulating employer obligations to notify employees of changes to paydays or pay rates where applicable. **Michigan:** There are no Michigan laws regulating changing paydays or pay rates. Employers are advised to comply with federal laws regulating Changing Paydays or Pay Rates where applicable.
Wage Deductions FLSA 29 U.S.C. §§ 201, *et seq*. FLSA, 29 U.S.C. §§ 203(m), 206(a), 29 C.F.R. §§ 531.27 – 531.35. U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #16 (Jul. 2009), https://www.dol.gov/agencies/whd/fact-sheets/16-flsa-wage-deductions. U.S. Dep't of Labor, Wage & Hour Div., Opinion Letter 2004-19NA (Oct. 8, 2004), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/2004_10_08_19FLSA_NA_recoup.pdf.	**Federal - Generally:** There are a variety of items that can be deducted from an employee's paycheck. Some of these deductions are mandatory and the employer is legally obligated to withhold the wages from an employee's payroll based on Federal and State laws. Other deductions are voluntary, and optional, and an employee must agree to have these wage deductions withheld from their paycheck. Some examples of mandatory and voluntary withholdings/deductions applicable to exempt and non-exempt employees include, but are not limited to, the following: <u>Mandatory:</u> • Federal, State and Local income tax withholding; • State unemployment insurance taxes; • FICA taxes (Social Security and Medicare); • Court ordered garnishments, wage attachment, trustee process, bankruptcy proceeding, levies, assessments or attachments. <u>Voluntary (require authorization and not for employer's benefit):</u> • Employee voluntary assignments; • Health and life insurance premiums; • Retirement or 401(k) contributions; • The purchase of U.S. savings stamps or bonds; • Union dues under a collective bargaining agreement; • Employee directed charitable contributions; or • Premiums the employer paid to maintain benefits for an employee during FMLA leave if the employee fails to return after leave expires.

Statute / Regulation	Requirement
29 U.S.C. § 3102(a)-1(b) FICA, 29 U.S.C. § 3102. 29 C.F.R. §§ 531.38 – 531.40 15 U.S.C. §§ 1671 – 1677; 29 C.F.R. §§ 870.1 – 870.57 U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #30 (Oct. 2020), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf. U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook , §30c10(a)-(c), https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-30#B30c10. FMLA, 29 C.F.R. §825.213. U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook , §30c03(a), https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-30#B30c03.	**Federal - Non-Exempt Employees:** Federal laws and regulations establish limits on amounts that may be deducted from non-exempt employee's pay. These wage deduction measures protect a portion of employees' pay from garnishments, support orders or tax levies and may require them to comply with legally mandated wage assignment. The Fair Labor Standards Act requires that employers must pay minimum wages and overtime to employees free and clear in cash or by check, except for certain allowable reasonable costs that include legally required tax deductions, board and lodging, facilities customarily furnished to employees and deductions made primarily for the convenience of the employees, such as insurance payments or union dues. Permitted Deductions. Employers can deduct taxes from an employee's wages even when the remaining wages fall below the federal minimum wage, including the employee's share of Social Security and state unemployment insurance taxes, as well as other federal, state or local taxes. Under the FLSA, employers may deduct the reasonable costs of providing meals, lodgings, and similar facilities even if it reduces an employee's average hourly take-home pay to less than the minimum wage. Meals provided by employers to employees are generally treated as being for the benefit and convenience of the employee. Consequently, the cost of meals may be considered part of noncash wages even in the circumstances surrounding an employee's duties that do not permit the worker to obtain meals elsewhere. Lodging provided to employees on a permanent basis or for an extended period of time would qualify as wages. The cost of providing board, lodging and similar facilities may not be considered as part of employee's wages if excluded from wages as part of a bonafide collective bargaining agreement. The cost of providing board, lodgings and similar facilities may not be considered as part of employee's wages as part of a bona fide collective bargaining agreement. Uniform costs considered to be primarily for the benefit or convenience of the employer are not to be included as wages, and employers may not take credit for such items in meeting their minimum wage or overtime obligations.

Statute / Regulation	Requirement
	If the employer requires the employee to bear the cost, it may not reduce the employee's wages below the minimum wage nor may it cut into required overtime compensation. The FLSA does not forbid employers from requiring prospective employees from buying or maintaining a uniform as a condition of employment, but the employee must be reimbursed no later than the next regular paydays to the extent that the cost cuts it the required minimum wage or overtime amounts.
29 C.F.R. § 541.602 – 603(a)&(b). U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #17G (Sep. 2019), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17g_salary.pdf	Employers may agree to pay employees an amount in excess of the minimum wage with the understanding that the excess payment is to allow the employees to replace a uniform when it is worn out. Employees cannot be required to buy the replacement uniform before the excess amount to recover the replacement cost is paid. Unless an employer is paying an amount sufficiently in excess of the applicable minimum wage, it must reimburse employees for laundry and maintenance costs to prevent such costs from cutting into the minimum wage or overtime pay requirements. A uniform maintenance reimbursement would not be required for uniforms that are wash and wear and may be laundered with other personal garments nor would it be required for uniforms that require daily or special laundering because of heavy soilage or usage or which require ironing, dry-cleaning or patching and repairs because of the nature of the work. Prohibited Deductions. The FLSA prohibits deductions from employee wages that would reduce the employee's earnings below the required minimum wage or overtime compensation, except for certain allowable reasonable costs, like the one's covered above Lodging facilities provided to firefighters or hospital employees for use during their shifts would not qualify as wages.
29 C.F.R. § 541.603(d).	No deductions may be made for any tax or share of tax required to be paid by the employer. Employees may not be required to pay the cost of certain items for the benefit of the employer, if by doing so, their wages would be reduced below the required minimum wage or overtime compensation, including damages to the employer's property by the employee or others, financial losses due to customer's failure to pay bills and theft of employer property by the employee or others. The use of kickbacks, which are part of an employee's wages that are directly or indirectly paid back to the employer or to another person for the employer's benefit, is forbidden, whether the kickback is made in cash or by some other means.

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Employees may not be required to pay for any of the cost of items, such as tools, considered to be the benefit or convenience of the employer if, by doing so, their wages would be reduced below the required minimum wage or overtime compensation.
<u>Wage Assignment.</u> The FLSA allows employers to deduct from employees’ wages amounts that employees have directed employers to pay to third parties.
Federal - Exempt Employees:
The FLSA requires exempt employees to be paid a fixed weekly salary that cannot be reduced based on the quality or quantity of the employee’s work. When an employer wishes to make a pay deduction for an exempt employee’s absence or due to a safety violation, it must ensure that the deduction is permitted under the FLSA. If improper deductions are taken, the exempt status of that employee and others in the same class may be lost and overtime and penalties may be due.
While deductions from pay for items that benefit the employee are allowed, such as the mandatory and voluntary deductions discussed above, docking pay for absences or safety violations is strictly limited. Deductions from pay are allowed:

When an exempt employee is absent from work for one or more full days for personal reasons other than sickness or disability;
For absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness;
To offset amounts an employee receives as jury or witness fees, or for temporary military duty pay;
For penalties imposed in good faith for infractions of safety rules of major significance;
For unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions;
In the employee’s initial or terminal week of employment if the employee does not work the full week, or
For unpaid leave taken by the employee under the Family and Medical Leave Act. For additional information on the effect of unpaid FMLA leave for employees under the Fair Labor Standards Act, employers can reference “The Employer’s Guide to The Family and Medical Leave Act” provided by the United States Department of Labor, Wage and Hour Division, a copy of which can be located <u>here</u>.

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	An employer may rectify improper pay deductions without penalty by following the safe harbor rules at 29 CFR 541.603. Employers may protect themselves under the safe harbor provision by: ▪ Establishing a clearly communicated policy prohibiting improper deductions and including a complaint mechanism. ▪ Reimbursing employees for any improper deductions in a reasonable time frame. ▪ Making a good-faith commitment to comply in the future. *For a more detailed discussion of application of the Salary Basis Test to payroll deductions for exempt employees, subscribers to the base compliance materials package are invited to refer to the Guidance on Deductions from Exempt Employees' Salaries for Full-Day Absences found here.* *Subscribers to the general state compliance materials package can locate a template Timekeeping and Pay for Exempt Employees Policy that is compliant with federal law here.*
	Michigan:
Mich. Comp. Laws § 408.477.	Permissible Deductions. An employer may make deductions from an employee's wages if: 1. the deduction is required or permitted by law; 2. the deduction is required or permitted by a collective bargaining agreement; or 3. the employee provides written consent that was obtained without intimidation or fear of discharge for refusing to permit the deduction. Even if the deductions meet the three requirements listed above, in no case shall deductions reduce the gross wages paid to the employee below the State minimum wage. If a deduction is for the employer's benefit, then it must first obtain the employee's written consent on each wage payment subject to the deduction. Moreover, the cumulative amount of the deductions cannot reduce the employee's gross wages below the minimum wage for the workweek. Deductions may also be permitted to remedy an overpayment of wages to an employee. Within six months after making an overpayment of wages or fringe benefits paid directly to an employee, an employer can deduct the overpayment without the employee's written consent if all the following conditions are met:

Statute / Regulation	Requirement
	1. the overpayment resulted from a mathematical miscalculation, typographical error, clerical error, or misprint in the processing of the employee's regularly scheduled wages or fringe benefits; 2. the miscalculation, error, or misprint was made by the employer, the employee, or a representative of the employer or employee; 3. the employer provides the employee with a written explanation of the deduction at least one pay period in advance of the wage payment affected by the deduction; 4. the deduction is not more than 15% of the gross wages earned in the pay period in which the deduction is made; 5. the deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction; and 6. the deduction does not reduce the employee's gross wages below the state or federal minimum wage, whichever is greater. Another deduction that does not require employee consent concerns repayment of amounts paid to satisfy a default judgment. If an employer pays an employee's debt under a default judgment, it can deduct that amount from the employee's regular wages without their written consent if all the following conditions are met: 1. the employer provides the employee a written explanation of the deduction at least one pay period before the deduction is made; 2. the deduction is not greater than 15% of the gross wages earned during the pay period in which the deduction is made; 3. the deduction is made after the employer has made all deductions expressly permitted or required by law or a collective bargaining agreement, and after any employee-authorized deduction; and 4. the deduction does not reduce the employee's gross wages below the state minimum wage for the workweek. Prohibited Deductions. State law does not specify any deductions that are expressly prohibited under any circumstances. However, if an employer does not comply with the requirement to obtain advance written authorization from an employee or the deduction exceeds amounts permitted under the law, as required for certain deductions, such deductions would be noncompliant and prohibited. *For assistance in drafting a legally compliant Wage Deduction Form for a specific incident or type of expense, or for assistance in establishing a program for deducting for meal and lodging credits, please contact us here.*

Statute / Regulation	Requirement
Other Deductions and Reimbursement FLSA, 29 U.S.C. §§ 203(m), 206(a), 29 C.F.R. §§ 531.27 – 531.35. U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook , §§ 30c00(a), 30c01(a)&(c), 30c02 (a)&(b), 30c03(a), 30c09(b) https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-30#B30c00 (Payment of Wages). 29 C.F.R. § 552.100(c)&(d) 29 C.F.R. §§ 531.35, 531.36(b) U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook , § 30c16, https://www.dol.gov/agencies/whd/field-operations-handbook/Chapter-30#B30c16.	**Federal:** Section 3(m) of the FLSA permits an employer, under conditions specified in 29 CFR 531, to count toward its minimum wage obligation, the reasonable cost of furnishing "board, lodging, or other facilities" which are customarily furnished to employees. This allows an employer to make qualifying deductions for "board, lodging, or other facilities which are customarily furnished to employees" even if the deductions would reduce an employee's pay below minimum wage. Employees must receive the benefit of the facility for which the employer is taking a wage credit (deduction). Moreover, the reasonable cost to the employer of furnishing board, lodging, or other facilities (or the fair value thereof) must be included in the employee's regular rate of pay for the purpose of computing overtime pay. An employer taking such a deduction for board, lodging or other facilities provided to its employees must ensure that the following five requirements are met: (a) the employer or similar employers regularly provide the lodging; (b) the employee voluntarily accepts the lodging; (c) the lodging is furnished in compliance with applicable federal, state, or local law; (d) the lodging is provided primarily for the benefit of the employee rather than the employer; and (e) the employer maintains accurate records of the costs incurred in furnishing the lodging. The Home Care Rule, however, allows an employer of a live-in domestic service employee to take a credit of up to 7.5 times the minimum wage for each week lodging is furnished without the need to maintain records. Similarly, the DOL will accept a credit taken by the employer of up to 37.5% of the statutory minimum hourly wage for a breakfast (if furnished), up to 50% of the statutory minimum hourly wage for a lunch (if furnished), and up to 62.5% of the statutory minimum hourly wage for a dinner (if furnished), which meal credits when combined do not in total exceed 150% of the statutory minimum hourly wage for any day. Alternatively, the employer may take a credit for the actual cost or fair value of furnishing meals, whichever is less, if such cost or fair value is different from the meal credits specified above. In such event, the employer must maintain records of those meal costs or fair value. *See* **Live-In/Sleep Time/Meal Time** section above.

Statute / Regulation	Requirement
U.S. Dep't of Labor, Wage & Hour Div., Field Operations Handbook , § 32j08, https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/FOH_Ch32.pdf.	Deductions for articles that do not qualify as "board, lodging, or other facilities" under FLSA section 3(m), such as tools, equipment, cash shortages, and other similar items, may be made in non-overtime workweeks (i.e., weeks of 40 hours or less, and weeks in which statutory overtime does not apply) provided the non-exempt employee continues to receive, after the deductions are made, any required minimum wage for all compensable hours worked in a workweek. Deductions can be made on the same basis in overtime weeks if the amount deducted does not exceed the amount which could be deducted if the employee had not worked overtime. Employers may not make deductions for administrative expenses incurred by an employer to the extent they cut into the minimum wage and overtime owed an employee. **Michigan:** There are no other Michigan laws regarding other wage deductions and reimbursements. Employers are advised to comply with federal laws regarding other wage deductions and reimbursements where applicable. *For assistance in drafting a legally compliant Wage Deduction Form for a specific incident or type of expense, or for assistance in establishing a program for deducting for meal and lodging credits, please contact us here.* *Subscribers to the base compliance materials package can locate a federal memorandum regarding meal and lodging wage payments for live-ins here.*
Wage Garnishment U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #30 (Oct. 2020), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs30.pdf. 15 U.S.C. §§ 1671 – 1677; 29 C.F.R. §§ 870.1 – 870.57	**Federal:** A wage garnishment is a legal or equitable procedure through which some portion of a person's earnings is required to be withheld by an employer for the payment of a debt (such as child support). Many garnishments are made by employers pursuant to court order (such as a spousal support order). Other types of legal or equitable procedures for garnishment by an employer include IRS or state tax collection agency levies for unpaid taxes and federal agency administrative garnishments for non-tax debts owed to the federal government. The federal Consumer Credit Protection Act ("***CCPA***") limits the amount of an individual's earnings that may be garnished in any one week for certain types of debts. The CCPA also prohibits an employer from discharging an employee whose wages have been subject to garnishment for any one debt, regardless of the number of levies made or proceedings brought to collect it. State law may also affect the garnishment process.

Statute / Regulation	Requirement
	The amount of pay subject to garnishment is based on an employee's "disposable earnings," which is the amount of earnings left after legally required deductions are made (e.g., federal, state, and local taxes, including the employee's share of Social Security, Medicare and State Unemployment Insurance tax). For ordinary garnishments (i.e., those not for support, bankruptcy, or any state or federal tax), the amount of earnings that may be garnished in any workweek or pay period may not exceed the lesser of two figures: 25% of the employee's disposable earnings, or the amount by which an employee's disposable earnings are greater than 30 times the federal minimum wage (currently, $7.25 an hour). Upon receipt of a wage garnishment notice, an employer is immediately required to take steps necessary to comply with the garnishment. Because each garnishment is unique, employers who are not well versed in handling garnishments should seek legal counsel or payroll assistance. **Michigan:**
Mich. Comp. Laws § 600.4012; 600.4027. Mich. Comp. Laws §§ 552.608; 552.609; 552.611; 552.623.	Debt Collection. If an employee is subject to a garnishment against their wages for collection of a debt, their employer will be served with a writ of garnishment ordering withholding of the outstanding amounts. Within seven (7) days of receipt, the employer must deliver a copy of the writ to the employee who owes the debt. Within 14 days of being served, the employer must file a disclosure with the Court issuing the writ of garnishment, the creditor, and the employee who owes the debt. certifying that the employer will immediately begin withholding any available funds pursuant to the garnishment. If the employee does, not object within 28 days, the employer should begin withholding payments to the employee and directing garnished amounts to the creditor. The writ of garnishment remains in effect until the debt has been satisfied—either until the employer has withheld and turned over the full amount of the debt disclosed in the writ or until the employee pays back the entire debt to the creditor themselves and the creditor files a satisfaction of judgment with the Court. Within 14 days of the satisfaction of the debt, the employer must file a final statement of the total amount paid on the writ with the Court and mail or deliver copies to the creditor and employee. An employer may deduct from its employee's wages a one-time administrative fee of $35 for each writ of garnishment served. *A garnishment disclosure form can be found here.* An employer is prohibited from disciplining or discharging an employee because wages are subject to a writ of garnishment. An employer that violates this provision will be required to reinstate the employee, if discharged, and reimburse all compensation lost as a result of the discipline or discharge.

Statute / Regulation	Requirement
	Support Orders. An employer that receives an order requiring income withholding for child or spousal support must begin withholding from the obligor-employee's wages within seven days of receiving the order, and must remit each withholding to the appropriate state agency within three days of each payday. The total amount of income withheld under all orders to withhold income for current support, past due support, fees, and health care coverage premiums effective against the employee cannot exceed 50% of the employee's disposable earnings as that term is defined under the federal Consumer Credit Protection Act. The employer may charge the employee an administrative fee of $2 in the form of wage deduction each time a payment is withheld to offset the time and cost to comply with support orders, so long as the fees do not exceed $4 per month. If the employer that remits child support payments electronically, it may charge a fee of only $1 each time a payment is withheld, so long as the fees do not exceed $2 per month. An employer that refuses to employ, discharges, disciplines, or penalizes an employee because the employee is subject to an order of support is guilty of a misdemeanor, punishable by a fine of not more than $500.00. The employer will be required to make full restitution to the employee, including reinstatement and back pay.
Vacation Time Mich. Comp. Laws §§ 408.471; 408.473.	**Federal:** Federal law generally does not require private sector employers to provide employees with vacation time or paid time off. Further, absent a contractual agreement to the contrary, Federal law does not require that unused vacation be paid to an employee upon termination. Employers are advised to comply with state law regulating payout of unused vacation time where applicable. **Michigan:** This state does not require an employer to offer employees other benefit compensation such as vacation pay or personal time off. However, once an employer establishes a policy and promises vacation pay and other types of additional compensation, the employer may not arbitrarily withhold or withdraw these fringe benefits retroactively. It is important to draft clear, precise, and complete policies and procedures regarding these benefits, as they can become contractual obligations and subject the employer to liability if withheld or reduced without notice. "Wages" do not include fringe benefits (compensation due an employee pursuant to a written contract or written policy for holidays, time off for personal reasons, or vacation). An employer must pay fringe benefits to or on behalf of an employee in accordance with the terms set forth in the written contract or written policy.

Statute / Regulation	Requirement
	Because vacation pay is a matter of policy or employment contract in Michigan, an employer is likely able to cap the amount of accrual to which an employee is entitled, and to impose a "use-it-or-lose-it" provision. Further, an employee's policy may require forfeiture of accrued vacation upon an employee's termination. According to the state labor department: > if the company policy has a pay-out provision which states that unused time will be paid to you when you separate your employment, then the employer would be obligated to pay you for the unused time. The employer would not be legally obligated to pay you for unused time if the company policy does not address the issue. An employer cannot withhold a payment of compensation due an employee as a fringe benefit to be paid at a termination date unless the withholding is agreed upon by written contract or a signed statement obtained with the full and free consent of the employee without intimidation or fear of discharge for refusing to agree to the withholding of the benefit. *For assistance in drafting a legally compliant Vacation or Paid Time Off Policy, please contact us here.*
Holidays	**Federal:** For private sector employers, federal law does not entitle employees to be paid holiday time off when excused from duty on a holiday or entitle them to holiday premium pay when they are required to work during holiday hours. Employers are advised to comply with state laws regulating holiday pay where applicable. **Michigan:** Michigan law does not require private employers to provide employees with either paid or unpaid holiday leave. In Michigan, a private employer can require an employee to work holidays. A private employer does not have to pay an employee premium pay, such as 1½ times the regular rate, for working on holidays, unless such time worked qualifies the employee for overtime under standard overtime laws. If an employer chooses to provide either paid or unpaid holiday leave, it must comply with the terms of its established policy or employment contract.
Days of Rest	**Federal:** Federal law does not require that employees be provided a day of rest each week. Employers are advised to comply with state laws regulating mandatory days of rest where applicable.

Statute / Regulation	Requirement
	Michigan: Employers are not required to provide employees with a day of rest each week, or compensate employees at a premium rate for work performed on the seventh consecutive day of work.
Family and Medical Leave FMLA, 29 U.S.C. §§ 2611(4)(A)(i), 2612(a) FMLA, 29 U.S.C. §§ 2611(2)(A)&(B)(ii)	**Federal:** Employers with at least 50 employees must provide eligible employees up to 12 weeks of unpaid leave in a 12 month period: • for the birth or placement of a child for adoption or foster care within one year of birth or placement; • to care for an immediate family member who has a serious health condition; • to take medical leave when the employee has a serious health condition and is unable to work; • for a qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty";* or • to care for a next of kin service member with a serious injury or illness.* * an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember shall be entitled to a total of 26 workweeks of leave during a 12-month period to care for the servicemember. FMLA covers employees who work for a covered employer for at least 12 months of employment and have worked at least 1,250 hours for the employer during the last 12 month period immediately preceding the leave, and at a location where 50 or more employees work within 75 miles of each other. For more comprehensive guidance on the Family and Medical Leave Act, eligibility for the same, and employer obligations under the same, employers can reference "The Employer's Guide to The Family and Medical Leave Act" provided by the United States Department of Labor, Wage and Hour Division, a copy of which can be located here. **Michigan:** There are no Michigan laws that regulate family and medical leave for employees. Employers are advised to comply with federal laws regulating family and medical leave where applicable. *Subscribers to the base compliance materials package can locate a template FMLA policy compliant with federal law here.* *Subscribers to the premium state compliance materials package can locate a template FMLA policy compliant with state law here.*

Statute / Regulation	Requirement
Paid Sick Leave and Public Health Emergency Leave Mich. Comp. Laws §§ 408.961	**Federal:** There are no federal laws requiring employers to provide employees with either short-term or long-term paid sick leave or public health emergency leave. Employers are advised to comply with state and municipal law regulating paid sick leave and public health emergency leave where applicable. **Michigan:** There is no public health emergency leave law. Paid Sick and Safe Time Leave. (NOTE: The Michigan Supreme Court is considering this law's constitutionality. See further details at near the end of this section). The law applies to employers that employ fifty (50) or more individuals. Covered employees include individuals engaged in service to an employer in the business of the employer and for whom an employer is required to withhold for federal income tax purposes. All employees are counted for purposes of determining whether an employer is required to provide leave to covered employees. But not all employees are granted the right to take sick leave. Employers are not required to extend leave to exempt executive, administrative, professional, or outside sales employees, individuals primarily performing work outside of the state of Michigan, , individuals covered by a collective bargaining agreement that is in effect, individuals that are employed for 25 weeks or fewer in a calendar year for a job scheduled for 25 weeks or fewer, and individuals who worked on average fewer than 25 hours per week during the immediately preceding calendar year. There are other exceptions for certain temporary help firm employees, variable-hour employees, and trainee employees that are younger than 20 years old. Eligible employees can use leave for personal reasons or to care for or assist a family member, which includes a child, grandchild, grandparent, parent, sibling, or spouse.

Statute / Regulation	Requirement
	There is a rebuttable presumption of compliance if each benefit year an employer provides at least forty (40) hours of paid leave, which includes, but is not limited to, paid vacation days, paid personal days, and paid time off. Otherwise, eligible employees begin accruing leave when employment begins (or after March 29, 2019 if already employed then). Employees will be entitled to accrue at least one (1) hour of sick leave per every thirty-five (35) hours worked. The employer may limit such accrual to one (1) hour per every calendar week. Employers may cap carryover at forty (40) hours per year or avoid carryover by granting 40 hours at the beginning of each year. Employers may prorate this benefit employees hired mid-year. Employers may cap usage and carryover at forty (40) hours per year. Employers may require employees to wait until 90th day after start of employment to use leave. Employers not required to restore previously accrued leave if employees are rehired. If an employee transfers to another entity or division of the same employer, that employee is entitled to all previously accrued leave. Leave can be taken for the following "sick" time purposes: mental or physical illness, injury, or health condition; medical diagnosis, care, or treatment of mental or physical illness, injury, or health condition; and preventative medical care. If an employee or family member is a victim of domestic violence or sexual assault, leave can be used for the following "safe" time purposes: medical care or psychological or other counseling for physical or psychological injury or disability; to obtain services from a victim services organization; to relocate; to obtain legal services; and to participate in civil or criminal proceedings. Finally, leave can be used for "other" purposes as well: closure of an employee's primary workplace, or a child's school or place of care, by order of a public official due to a public health emergency; and when health authorities or a health care provider determines an employee's or family member's presence in the community would jeopardize others' health because of the individual's exposure to a communicable disease, whether or not individual actually contracted the communicable disease. Leave may be used as it is accrued, but employers can require employees to wait until the 90th calendar day after employment begins to use leave. Leave must be used in one-hour increments unless an employer has a different increment policy written in an employee handbook or other employee benefits document. An employer is not required to permit employees to use more than forty (40) leave hours in a year.

Statute / Regulation	Requirement
	Employees must comply with an employer's usual and customary notice, procedural, and documentation requirements for requesting leave. An employee's failure to comply with these requirements can result in discipline or discharge. An employee must be given at least three (3) days to provide documentation to an employer. Leave must be paid at the employee's normal hourly or base wage or the state minimum wage, whichever is greater. Employers can exclude the following when calculating an employee's pay rate: overtime pay; holiday pay; bonuses; commissions; supplemental pay; piece-rate pay; gratuities. A poster must be conspicuously displayed at the employer's place of business in a place that is accessible to employees that contains all the following information: the amount of leave the law requires to be provided to an employee; the terms under which leave may be used; and an employee's right to file a complaint with the state labor department concerning a violation. For not less than one year, an employer must keep records documenting hours worked and leave taken by employees. As a condition of providing leave, an employer cannot require an employee to disclose details relating to domestic violence or sexual assault, or details of an employee's or family member's medical condition. Additionally, an employer cannot require that an employee's documentation explain the details of domestic violence or sexual assault. If an employer possesses health information or information pertaining to domestic violence or sexual assault about an employee or family member, it must treat that information as confidential and cannot disclose it except to the affected employee or with the affected employee's permission. When employment ends, an employer is not required to payout the monetary value of an employee's unused leave. If an employee is later rehired, an employer is not required to reinstate previously unused leave. **NOTE: The Paid Medical Leave Act that amended the Earned Sick Time Act was held unconstitutional by the Michigan Court of Claims on July 19, 2022. The court granted a stay of the decision until February 19, 2023. In the meantime, on January 26, 2023, the Michigan Court of Appeals held the Michigan Paid Medical Leave Act is constitutional. On June 21, 2023, the Michigan Supreme Court agreed to decide this case.** **If the Paid Medical Leave Act is held unconstitutional, Michigan will revert to the provisions in the Earned Sick Time Act (ESTA). Under that Act:**

Statute / Regulation	Requirement
	There is no small employer exemption. The ESTA applies Michigan employers with at least one employee. Under the ESTA, small businesses must provide employees up to forty (40) hours of paid sick leave and an additional thirty-two hours of unpaid sick leave time per year. Employers with ten (10) or more employees must provide up to seventy-two (72) hours of paid sick leave per year. Under the ESTA, an employer may not request documentation supporting the qualified need for paid sick leave unless an employee is absent for more than three days. When documentation is provided, the ESTA does not require that it be detailed. Employers are responsible for out-of-pocket costs related to securing documentation. Under the ESTA, employees accrue leave as they work, and employers cannot front load sick leave time at the beginning of the year. *For assistance with creating a Paid Sick Leave Policy compliant with local ordinances, please contact us here.* *Subscribers to the premium state compliance materials package can locate a template Paid Sick Leave Policy compliant with state law here.* *A Paid Sick Leave Poster can be found here.*
Pregnancy Leave Pregnancy Discrimination Act (PDA), 42 U.S.C. § 2000e(k); 29 C.F.R. § 1604.10. FMLA, 29 U.S.C. §§ 2612(a)(1)(A)&(D), (b)(1)	**Federal:** Pregnancy Discrimination Act. The PDA forbids discrimination based on pregnancy when it comes to any aspect of employment, including hiring, firing, pay, job assignments, promotions, layoff, training, fringe benefits, such as leave and health insurance, and any other term or condition of employment. The PDA applies to employers with 15 or more employees. Generally, under the PDA, disabilities related to pregnancy or childbirth must be treated the same as disabilities related to other medical conditions under an employer's insurance or sick leave plan, and the employer's sick leave policies must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms. An employer may not compel an employee to take leave because the employee is pregnant, as long as the employee is able to perform the job. Employers must hold open a job for the same length of time as jobs for employees on sick or disability leave. Family and Medical Leave Act (FMLA). A pregnant employee may take FMLA leave intermittently for prenatal examinations or for the employee's own serious health condition. FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave is subject to the employer's approval.

Statute / Regulation	Requirement
Americans with Disabilities Act (ADA), 42 U.S.C. § 12101 *et seq.*; 29 C.F.R. §§ 1630, 1630.2(e)-(q), 1630.4.	Americans with Disabilities Act (ADA). Pregnancy alone is not considered a disability for purposes of the ADA. To be considered a disability under the ADA, covered persons must have a physical or mental impairment that substantially limits a major life activity. Accordingly, pregnancy-related impairments may constitute disabilities under the ADA. An employer may not discriminate against an individual whose pregnancy-related impairment is a disability under the ADA and must provide an individual with a reasonable accommodation if needed because of a pregnancy-related disability, unless the accommodation would result in significant difficulty or expense. Among others, leave may be a reasonable accommodation that may be necessary for a pregnancy-related impairment, and may be granted in addition to what an employer may also provide under a sick leave policy. An employee may also be allowed to take leave beyond the maximum FMLA leave as a reasonable accommodation.
Pregnant Workers Fairness Act, H.R. 1065, 117th Cong. (2021).	Pregnant Workers Fairness Act. Effective June 27, 2023, under the Pregnant Workers Fairness Act (PWFA), employers must engage in an interactive process for any employee and prospective employee affected by pregnancy, childbirth, or related medical conditions to determine if a reasonable accommodation can be made. Employers cannot require employees to take either a paid or unpaid leave where another reasonable accommodation can be made. In addition, employers cannot force individuals to take an accommodation that is not arrived at through the interactive process. For more comprehensive guidance on the Pregnancy Discrimination Act, Family and Medical Leave Act, and the Americans with Disabilities Act, employers can reference "The Employer's Guide to The Family and Medical Leave Act" provided by the United States Department of Labor, Wage and Hour Division, a copy of which can be located here.
Mich. Comp. Laws §§ 37.2201; 2202.	**Michigan:** The denial of disability benefits for sex-related disabilities is unlawful. Employers with one or more employees are prohibited from discriminating against a person on the basis of sex with respect to any term, condition or privilege of employment, including a benefit plan or system. "Sex" under this law includes, but is not limited to, pregnancy, childbirth, the termination of a pregnancy, or a related medical condition. *See also* **Pregnancy Accommodation.** *Subscribers to the base compliance materials package can locate a template Disability Policy that is compliant with federal law here.* *Subscribers to the base compliance materials package can locate a template Pregnancy, Childbirth, and Related Medical Conditions Policy compliant with federal law here.*

Statute / Regulation	Requirement
	Subscribers to the base compliance materials package can locate a template FMLA Policy compliant with federal law here. *Subscribers to the premium state compliance materials package can locate a template Pregnancy Accommodation Policy and Lactation Accommodation Policy compliant with state law.*
Adoptive Parents Leave FMLA, 29 U.S.C. § 2601, *et seq*.	**Federal:** An eligible employee of covered employers may take unpaid, job protected leave (up to 12 workweeks of FMLA leave in a 12-month period) for the placement with the employee of a child for adoption or foster care and to bond with the newly placed child within one year of placement. An employee's entitlement to FMLA leave for the placement of a child for adoption or foster care expires 12 months after the placement. **Michigan:** There are no Michigan laws regulating adoptive parents leave. Employers are advised to comply with federal laws regulating adoptive parents leave where applicable. *Subscribers to the base compliance materials package can locate a template FMLA Policy compliant with federal law here.*
Military and Civil Air Patrol Leave 38 U.S.C. § 4301, *et seq*.; 29 C.F.R. § 825.126(a).	**Federal:** Two federal statutes primarily govern military-related leave: (a) the Uniformed Services Employment and Reemployment Rights Act (USERRA); and (b) the FMLA. USERRA. Imposes obligations on all public and private employers to provide employees with leave to "serve" in the "uniformed services." The law also requires employers to reinstate employees returning from military leave who meet certain defined qualifications. An employer also may have an obligation to train or otherwise qualify such employees returning from military leave. USERRA guarantees employees a continuation of health benefits for the 24 months of military leave (at the employee's expense) and protects an employee's pension benefits upon return from leave. Finally, USERRA requires that employers not discriminate against an employee because of past, present, or future military obligations, among other things. Some states provide greater protections for military leave for employees. USERRA, however, establishes a "floor" with respect to the rights and benefits an employer is required to provide to an employee to take leave, return from leave, and be free from discrimination. Note that USERRA voids any state law that seeks to supersede, nullify, or diminish these USERRA rights. *Subscribers to the base compliance materials package can locate a template Military Leave Policy compliant with federal law, including USERRA here.*

Statute / Regulation	Requirement
	FMLA. Under the FMLA, eligible employees may take leave for: (a) any "qualifying exigency" arising from the foreign deployment of the employee's spouse, son, daughter, or parent with the armed forces; or (b) to care for a next of kin servicemember with a serious injury or illness (referred to as "***military caregiver leave***"). • Qualifying Exigency Leave. An eligible employee may take up to 12 weeks of unpaid leave in a single 12 month period if the employee's spouse, child, or parent is an active duty member of one of the U.S. armed forces' reserve components or National Guard, or is a reservist or member of the National Guard who faces recall to active duty if a qualifying exigency exists. An eligible employee may also take leave for a qualifying exigency if a covered family member is a member of the regular armed forces and is on duty, or called to active duty, in a foreign country. Notably, leave is only available for covered relatives of military members called to active federal service by the president and leave is not available for those in the armed forces recalled to state service by the governor of the member's respective state. • Military Caregiver Leave. An eligible employee may take up to 26 weeks of unpaid leave in a single 12 month period to care for a "covered servicemember" with a serious injury or illness if the employee is the servicemember's spouse, child, parent, or next of kin. For more comprehensive guidance on the Military Family Leave required under the Family and Medical Leave Act, eligibility for the same, and employer obligations under the same, employers can reference "The Employer's Guide to The Family and Medical Leave Act" provided by the United States Department of Labor, Wage and Hour Division, a copy of which can be located here. *Subscribers to the base compliance materials package can locate a template FMLA Policy compliant with federal law here.* **Michigan:**
Mich. Comp. Laws §§ 32.272; 32.273; 408.921.	Military Service. Employers are prohibited from discharging or otherwise discriminating against an employee because of membership or service in the military or naval forces of Michigan or any other state. State law also explicitly prohibits an employer from preventing employees from performing military service; attending any military encampment, drill, or instruction; or dissuading any person from enlisting or accepting a commission in the National Guard or naval militia by threatening his/her employment.

Statute / Regulation	**Requirement**
	Employees who are members of the state or U.S. naval or military forces are entitled to take a leave of absence for the purpose of being inducted into or entering into active service, active state service, or the service of the United States, for the purpose of determining their physical fitness to enter the service, or for performing service as an officer or enlisted member of the military or naval forces of this state, any other state, or the United States in active state service. Employees must provide advance notice for a period of leave for military service. The statute does not define “advance notice.” Reinstatement. Following honorable release from service, training duty, or rejection, the employee must be reinstated, as long as they apply for reemployment within 45 days of the completion of service, or if service was for more than 180 days, then within 90 days following release. When returning such an employee to work, employers must abide by the following order of priority: 1. if service lasted 90 days or less, and if the employee remains qualified to perform the associated duties, the employee must be reemployed in the position they would have held if their continuous employment had not been interrupted by military service—including any promotion; 2. if service lasted 90 days or less, and if the employee is not qualified to perform the duties associated with the position mentioned above, and if the employer has made reasonable efforts to qualify the employee for such position, the must be reinstated to his/her former position (that is, the position held at the time military service commenced); 3. if service lasted 91 days or more, the employee must be reemployed in in either of the above-described positions. If the employee is not or cannot become qualified to perform the above positions, they may be placed in a position that is the nearest approximation in status and pay to either the position they would have held without interruption in employment or the position the employee held before leaving. An employee is not entitled to re-employment if they were absent for an uninterrupted period of service that exceeds five (5) years. “Period of service” does not include all service time, however. For example, when calculating the period of service, time is excluded beyond five years if a portion of that time required to complete an initial period of obligated service, such as basic training. Time is also excluded if the employee is ordered to or retained on active duty under certain federal statutes or because of war or national or state emergency. Numerous exceptions are set forth in the Michigan statute.

Statute / Regulation	Requirement
	Additionally, an employee is not entitled to re-employment if their military service is terminated under certain circumstances, such as a dishonorable discharge or dropping from the rolls. Employment Benefits. A reinstated employee is entitled to the seniority and other seniority-based rights and benefits the person had on the date they left for service, plus the additional seniority, rights, and benefits the person would have attained if the person had been continually employed. In addition, the employee is entitled to all non-seniority based rights and benefits the employer provides to other similarly situated employees who are on furlough or leave of absence. *Subscribers to the premium state compliance materials package can locate a template here: Military Leave Policy.* Civil Air Patrol Leave. Michigan also offers certain job protections to members of the civil air patrol, which is the civilian auxiliary of the U.S. Air Force. Similar to the requirements for those in military service, it is illegal for employers to discriminate against, discipline, or discharge an employee due to their membership in the civil air patrol or because the employee is absent from work for the purpose of responding as a member of the civil air patrol to an emergency declared by the governor or the President of the United States. Employees who are members of the civil air patrol and are trained and qualified to provide emergency services are entitled to protected leave for the purpose of responding to an emergency declared by the governor or the president of the United States. To be entitled to take leave, the employee must inform their employer that they are a member of the civil air patrol and may be called to provide emergency services. This notice must be furnished within 30 days of the start of employment or the date the employee joined the civil air patrol, whichever is latest. If called to duty, the employee must give their employer as much notice as possible of the dates the employee will be absent to serve with the civil air patrol during the emergency. The employee must also provide the employer with verification from the civil air patrol of the emergency need for the employee's volunteer service. An employer may treat an absence due to civil air patrol service as unpaid time off, unless otherwise required by federal law. The statute does not prohibit an employer from complying with a collective bargaining agreement or employee benefit plan entered into prior to the date of enactment. *Subscribers to the premium state compliance materials package can locate a template Civil Air Patrol Leave Policy that is state compliant here.*

Statute / Regulation	Requirement
Emergency Responder Leave Mich. Comp. Laws § 408.921	**Federal:** There are no federal laws requiring employers to provide emergency responder leave. Employers are advised to comply with state and municipal law regulating emergency responder leave where applicable. **Michigan:** There are no Michigan laws regulating general emergency responder leave. Employers are advised to comply with federal laws regulating emergency responder leave where applicable. Employers must grant leave to employees who are members of the Civil Air Patrol and respond to related emergencies. Employees must give employers verification from the Civil Air Patrol about any emergency need for their volunteer service. Employers may treat leave under this statute as unpaid. *See also* **Military and Civil Air Patrol Leave**.
Leave to Participate in Judicial Activities Jury System Improvement Act, 28 U.S.C. § 1875. FLSA, 29 C.F.R. § 541.602(b)(3). Mich. Comp. Laws § 600.1348.	**Federal:** Employers may not discharge, threaten to discharge, intimidate, or coerce any permanent employees due to jury service in federal court. Generally, time spent engaged in attending court for prospective jury service, for serving as a juror, or as a witness is not compensable, except that exempt employees may not incur any reduction in pay for a partial week's absence due to judicial activities. Further, while an employer cannot make deductions from pay for absences of an exempt employee occasioned by participation in judicial activities, the employer can offset any amounts received by an employee as jury fees or witness fees for a particular week against the salary due for that particular week without loss of the exemption. In addition, an employer may be required to grant leave to employees summoned to testify, assist, or participate in federal agency hearings. **Michigan: A**n employee is entitled to leave to participate in judicial activities. Employers must not discharge, discipline, or threaten to discharge or discipline, an employee because the employee is summoned for jury duty, serves on a jury, or has served on a jury. Leave granted may be unpaid leave, unless otherwise required to be paid by federal law. An employer may, in its sole discretion, require employees to work on days they are required to attend court for jury service provided the combined number of hours worked and hours spent participating in jury service does not exceed the amount of hours the employee would work on a regularly scheduled workday However (unless a collective bargaining agreement or applicable law provides otherwise) eligible employees may voluntarily agree to work, and the employer may require eligible employees to work hours in excess of their regular schedule or quitting time. All such work time will be paid in accordance with applicable law.

Statute / Regulation	Requirement
	See also **Domestic Leave Violence** for general law on victims of crime. *Subscribers to the premium state compliance materials package can locate a template Jury Duty Leave Policy that is compliant here.*
Crime Victim Leave	**Federal:** There are no federal laws that directly address a private employer's obligation to grant leave to an employee because of status as a victim of a crime, including but not limited a related to domestic violence. However, the federal FMLA leave may be available to address certain health-related issues resulting from the commission of a crime. Under the FMLA, employees who work for an employer with 50 or more employees working within 75 miles of each other and has worked for the employer for at least one year and at least 1,250 hours in the past year, may take up to 12 weeks off in any 12-month period for the employee's own serious health condition, to care for a family member with a serious health condition, including a spouse, son, daughter, or parent with a serious health condition. Where such health conditions, whether physical or psychological in nature, are developed because of the commission of a crime (e.g., domestic violence), affected employees may be qualified for leave under the FMLA. Leave under the FMLA is unpaid. Title VII of the Civil Rights Act of 1964 also prohibits disparate treatment by an employer with respect to any unpaid leave of absence. For example, an employer may not permit a male employee to use unpaid leave for a court appearance in a criminal prosecution of an assault, but deny a similarly situated female employee unpaid leave to testify in a court proceeding regarding domestic violence experienced. The Americans with Disabilities Act of 1990 also requires employers to provide reasonable accommodation for an actual disability or record of disability, which may arise from the commission of a crime. An actual disability is a physical or mental impairment that substantially limits one or more major life activity, and a record of a disability means a history of such a substantially limiting impairment. An impairment does not need to result in a high degree of functional limitation to meet this standard. A reasonable accommodation may include time off for treatment, modified work schedules, and reassignment to a vacant position if a disability is developed because of a criminal offense, including domestic violence.
Mich. Comp. Laws § 780.762	**Michigan:** An employee who is a victim of a crime or a representative of a crime victim is entitled to take time off from work to testify in or attend a judicial proceeding. Leave may be unpaid. A victim representative is: 1. The guardian or custodian of a child of a deceased victim, if the child is under 18 years of age;

Statute / Regulation	Requirement
	2. The parent, guardian or custodian of a victim of an assaultive crime, if the victim is under 18 years of age; or 3. A person designated to act in place of a victim of an assaultive crime while the victim is physically or emotionally disabled. *Subscribers to the premium state compliance materials package can locate a template Crime Victim Leave Policy that is state compliant here.*
Donor Leave	**Federal:** There are no federal laws requiring an employer provide employee time off for donor leave. Employers are advised to comply with state and municipal laws regulating employer obligations to provide donor leave. **Michigan:** There are no Michigan laws regulating donor leave. Employers are advised to comply with federal laws regulating donor leave where applicable.
Voting Time Mich. Comp. Laws § 168.931(1)(d)	**Federal:** There are no federal laws requiring an employer provide employees time off to vote. Employers are advised to comply with state and municipal laws regulating employer obligations to provide employees time off to vote where applicable. **Michigan:** There are no Michigan laws regulating voting time. Employers are advised to comply with federal laws regulating voting time where applicable. An employer may not, either directly or indirectly, discharge, or threaten to discharge, an employee to influence the employee's election vote. *Subscribers to the premium state compliance materials package can locate a template Time Off to Vote Leave Policy that is state compliant here.*
Leave to Participate in Political Activities	**Federal:** There are no federal laws that address a private employer's obligation to grant leave for an employee to participate in political activities. Employers are advised to comply with state and municipal law that addresses a private employer's obligation to grant leave for an employee to participate in political activities where applicable. **Michigan:** There are no Michigan laws regulating leave to participate in political activities. Employers are advised to comply with federal laws regulating leave to participate in political activities where applicable.

Statute / Regulation	Requirement
Domestic Violence Leave FMLA, 29 U.S.C. § 2612(a). U.S. Dep't of Labor, Frequently Asked Questions (FAQ), https://webapps.dol.gov/dolfaq/go-dol-faq.asp?faqid=597&topicid=1&subtopicid=7. Mich. Comp. Laws §§ 780.752; 780.781; 780.811; 780.822; 780.790.	**Federal:** There are no federal laws that directly address a private employer's obligation to grant leave to an employee because of domestic violence. However, FMLA leave may be available to address certain health-related issues resulting from domestic violence. An eligible employee may take FMLA leave because of their own serious health condition or to care for a qualifying family member with a serious health condition that resulted from domestic violence. For example, an eligible employee may be able to take FMLA leave if they are hospitalized overnight or are receiving certain treatment for post-traumatic stress disorder that resulted from domestic violence. **Michigan:** Under a general law for victims of crime, employee is eligible for time off if: 1. the employee suffered direct or threatened physical, financial, or emotional harm as a result of the commission of a crime; 2. the victim of the crime is deceased, and the employee is: ▪ the victim's spouse; ▪ the victim's child who is 18 years of age or older; ▪ the victim's parent; ▪ the guardian or custodian of the victim's child if the child is under 18 years of age; ▪ the victim's sibling; or ▪ the victim's grandparent; 3. the victim is under age 18 and the employee is the victim's parent, guardian, or custodian (but not the defendant or incarcerated); 4. the victim is mentally or emotionally unable to participate in the legal process and the employee is the victim's parent, guardian, or custodian (but not the defendant or incarcerated); or 5. the victim is physically or emotionally unable to exercise their legal rights as a crime victim and the employee is the victim's designated representative as their spouse, child (18 years of age or older), parent, sibling, grandparent, or person 18 years of age or older who is neither the defendant nor incarcerated. An employee who is a defendant in the criminal proceedings or is incarcerated is not eligible for time off. In addition, an employee who is charged with a crime arising out of the same transaction from which the charge against the defendant arose is not eligible for time off. An eligible employee may take time off from work to: (1) respond to a subpoena or request by the prosecuting attorney to serve as a witness; or (2) attend court during the employee's or another victim's testimony.

Statute / Regulation	Requirement
	There is no requirement that the employee be compensated for absences taken pursuant to the statute. An employer or employer's agent who threatens to discharge or discipline or discharges or disciplines a victim or victim representative is guilty of a misdemeanor and subject to imprisonment of up to 90 days and a fine of up to $500. *See also* **Paid Sick Leave and Public Health Emergency Leave**. *Subscribers to the state compliance materials package can find a template Paid Sick Leave Policy that is state compliant here*.
Other Employee Leave Provisions	**Michigan:** There are no Michigan laws regulating other employee leave provisions. Employers are advised to comply with federal laws regulating other employee leave provisions where applicable
Workplace Violence Protection Orders	**Federal:** There are no federal laws that address a private employer's obligations related to a workplace response to employees who are victims of domestic violence, stalking, or sexual assault or court protection orders for employee victims. Employers are advised to comply any with state and municipal laws that address a private employer's obligations related to workplace violence and related protective orders where applicable. **Michigan:** There are no Michigan laws regulating workplace violence protection orders. Employers are advised to comply with federal laws regulating workplace violence protection orders where applicable.
Restrictive Covenant Law (Post-Hire)	**Federal:** Restrictive covenants are limitations placed on an employee's conduct by an employer commonly in employment contracts that are to remain in force after their employment has ended, such as a prohibition on an employee from competing against the employer within a particular geographic area for a specified period of time, prohibition on an employee from soliciting clients or other employees of the company to join a competitor, and/or a confidentiality agreement preventing the employee from disclosing or using the employer's proprietary or confidential information. There is currently no federal law governing restrictive covenants. Therefore, a restrictive covenant's ability to protect an employer's interests after the employee's employment is terminated depends on applicable state law and the type of relationship or covenant involved, among others. These agreements generally need to be narrowly tailored to state law and the specific operations of the business.

Statute / Regulation	Requirement
	However, employers should note that the General Counsel for the National Labor Relations Board ("NLRB") released a memorandum on May 30, 2023, that discourages the use of non-compete agreements for most low and middle wage workers who lack access to trade secrets or other protectible interests, because, according to the General Counsel for the NLRB, they likely violate Section 8(a)(1) of the National Labor Relations Act by chilling an employee's right to engage in Section 7 activity. The NLRB's memorandum acknowledges that these agreements may be allowed if they are, "narrowly tailored to special circumstances justifying the infringement on employee rights" or where they, "clearly restrict only individuals' managerial or ownership interests in a competing business, or true independent contractor relationships." It is unlikely the agreement would be considered reasonable in state jurisdictions that have declared the agreements unenforceable. Most notably, simply having an agreement or provision in an agreement could be a violation of the NRLA even if the employer does not try to enforce the agreement/provision. Employers looking to implement a non-compete agreement or employers that currently have non-compete agreements in place are encouraged to consult with employment counsel.
Mich. Comp. Laws § 445.774a	**Michigan:** An employer may obtain an employment agreement that protects the employer's reasonable competitive business interests and expressly prohibits the employee from engaging in employment or in a line of business after termination of employment, provided the agreement is reasonable as to its duration, geographical area, and the type of employment or line of business. Durations of six months to three years have been enforced in Michigan, depending on the size of the corresponding geographic area. Generally, the larger the geographic area a non-compete covers, the shorter the duration must be for it to be found reasonable. The standard for reasonableness of geographic limitations is whether the limitations are no greater than reasonably necessary to protect the employer's legitimate business interest. The scope of activities must be limited to those actually performed by the employee. One Michigan appellate court held that even when an employee was terminated, the employee was bound to the non-compete agreement and could not work for a competitor.
Coates v. Bastian Bros., Inc., 276 Mich. App. 498, 500, 741 N.W.2d 539, 542 (2007)	Reasonable non-compete agreements are enforceable whether an employee resigns or is terminated.

Statute / Regulation	Requirement
QIS, Inc. v. Indus. Quality Control, Inc., 262 Mich. App. 592, 594, 686 N.W.2d 788, 789 (2004)	Restrictive covenants require an employee to promise not to do something they would otherwise have been able to do. Therefore, employers need to provide an employee with "consideration" (*i.e.*, giving something of value such as a promise to do something that the employer was not otherwise obligated to do). The law is well-established that an employee's continued employment by a successor employer after a corporate buy-out is sufficient consideration for a non-compete agreement. Continued employment is also sufficient consideration if employment is at will unless the employer has a preexisting duty to continue employment, such as a contract for employment with a fixed term. We recommend a narrowly tailored Proprietary Information, Non-Solicitation Agreement, and Protective Covenants Agreement to prevent the solicitation of other employees and clients for most field staff. A non-compete agreement may be appropriate for key office staff but is generally not appropriate for most field staff. Agencies should also consider including a direct hire provision, inclusive of attorneys' fees and costs, in their client service agreement. Special rules apply if the non-compete agreement is entered into after employment has commenced. Employers must ensure that employees receive sufficient consideration when entering into a non-compete agreement after employment has commenced. Counsel should be consulted if the non-compete agreement is entered into after the start of employment. *See also* **Restrictive Covenant Law (Pre-Hire)** *Subscribers to the premium state compliance materials package can locate a template Confidentiality and Non-Solicitation Agreement for caregivers here.* *Subscribers to the base compliance materials package can locate a federal template Client Service Agreement here*. *For assistance with drafting non-compete agreements for key executives and state-compliant client service agreements, please contact us here.*
Fair Employment Practices Protections 42 U.S.C. §§ 2000e, *et seq*.; 42 U.S.C. §§ 12101, *et seq*.; 29 U.S.C. §§ 621, *et seq*.; 29 U.S.C. § 206(d); 42 U.S.C. § 1981, §1983.	**Federal:** It is illegal for an employer to discriminate against an applicant or employee on the basis of that person's race, color, religion, national origin (includes ancestry), sex (includes sexual orientation and gender identity, pregnancy, childbirth, or related medical conditions), disability, age (40 or older), or genetic information. *See also* **Use of Artificial Intelligence in Employment Decisions**

Statute / Regulation	Requirement
Mich. Comp. Laws §§ 423.501; 423.508. Mich. Comp. Laws § 750.398.	**Michigan:** Prohibits employers and their agents (with one or more employees) from discriminating against employees on the basis of race (inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles – including but not limited to such hairstyles as braids, locks, and twists), color, national origin (includes ancestry), age, sex (includes pregnancy, childbirth, the termination of a pregnancy, or a related medical condition), sexual orientation, gender identity or expression, religion, disability (includes being regarded as disabled), genetic information, height, weight, and marital status. Although "[t]he opportunity to obtain employment . . . without discrimination because of . . . familial status" is noted as a civil right, "familial status" is not included in any of the employment antidiscrimination provisions. These protections do not apply to the employment of an individual by their parent, spouse, or child. *Subscribers to the state compliance materials package can find a template Respectful Workplace Policy that is state compliant here.* Nonemployment Activities. Employers with four or more employees must not gather or maintain a record of an employee's associations, political activities, publications, or communications of nonemployment activities. However, the employer may do so if the information is submitted in writing by or authorized in writing by the employee. The prohibition does not apply to activities that occur on the employer's premises or during the employee's working hours that interfere with the performance of the employee's duties or duties of other employees. A record which is kept by the employer as permitted under this statute is considered to be part of the employee's personnel record. *Subscribers to the premium state compliance materials package can find a template Nonemployment Policy that is state compliant here.* State Militia Status. Employers may not deprive, "prevent, obstruct, or annoy" members of the state organized militia with respect to the members' employment. Violators are guilty of a misdemeanor. *A required Anti-Discrimination poster can be found here.* *A required Whistleblower Protection poster can be found here.*

Statute / Regulation	Requirement
	Municipal:
Ann Arbor, Mich., Code of Ordinances §§ 9:150; 9:151; 9:154; 9:157.	Ann Arbor: Employers employing three or more individuals must extend antidiscrimination protections on the basis of: actual or perceived chronological age; arrest record; color; disability; educational association; familial status; family responsibilities; gender expression; gender identity; genetic information; height; HIV status; marital status; national origin; political beliefs; race; religion; sex (including gender, gender identity, gender expression, pregnancy, childbirth, and medical conditions related to pregnancy and childbirth, as well as sexual harassment); sexual orientation; source of income; veteran status; victim of domestic violence or stalking; and weight.
Detroit, Mich., Code of Ordinances §§ 27-1-2; 27-2-12; 27-3-1. Detroit, Mich., Code of Ordinances §§ 27-7-2; 27-7-3; 27-7-11.	Detroit: Employers (and their agents) employing one or more employees are subject to the following antidiscrimination protections: race; color; religious beliefs; national origin; age (chronological); marital status; disability; sex; sexual orientation; and gender identity or expression. There is a separate ordinance that provides protections on the basis of AIDS and AIDS-related conditions.
Grand Rapids, Mich., Code of Ordinances §§ 9.936; 9.937; 9.939; 9.944.	Grand Rapids: Protected classifications include: race; color; religion or creed; national origin; genotype; age; gender identity or expression; sexual orientation; marital status; familial status; medical condition; disability; height and weight; source of lawful income. A covered employer includes any person compensating one or more individuals for the performance of work in a lawful business or enterprise.
Jackson, Mich., Code of Ordinances §§ 15-41; 15-44; 15-45.	Jackson: Employers employing one or more persons must extend antidiscrimination protections on the basis of race; color; religion; national origin; sex; age (chronological); height; weight; marital status; physical or mental disability; family status; sexual orientation; and gender identity.
Lansing, Mich., Code of Ordinances §§ 297.02; 297.03; 297.07; 297.08; 297.09.	Lansing: Protected classifications include: race; color; religion; national origin; sex (also includes sexual harassment); age (chronological, measured from the date of birth); height; weight; marital status; physical or mental disability; family status; sexual orientation; gender identity or expression; veteran status; HIV status; source of income; ancestry; student status; housing status; political affiliation or belief; and service in the armed forces of sovereign nations. Employers with a business located within or doing business in the corporate city limits of Lansing, and employing or seeking to employ five or more employees (including agents) are covered by the antidiscrimination ordinance. *Subscribers to the premium state compliance materials package can locate template notices, consents and other materials for conducting background checks in the state here.*

Statute / Regulation	Requirement
	Home-based care providers should also consult the applicable state licensing guides available on POSH to determine whether the state has unique background check requirements for particular caregiver positions. *Subscribers to the premium state compliance materials package can locate template Equal Employment Opportunity, Respectful Workplace, Disability, and Political Opinions policies that are state compliant.* *For assistance with customizing policies to comply with municipal ordinances, please contact us here.*
Equal Pay Protections 29 U.S.C. § 206(d)(1); 29 C.F.R. §§ 1620.1(a)(1)(c), 1620.10, 1620.11, 1620.13-1620.20, 1620.25. Mich. Comp. Laws §§ 408.412; 408.423.	**Federal:** The Equal Pay Act (EPA) protects against wage discrimination based on sex. The EPA protects both men and women. All forms of compensation are covered, including salary, overtime pay, bonuses, life insurance, vacation and holiday pay, cleaning or gasoline allowances, hotel accommodations, reimbursement for travel expenses, and benefits. Employers must pay men and women employees who perform substantially equal jobs equal wages. If there is an inequality in wages between men and women who perform substantially equal jobs, the employer must raise wages to equalize pay (but may not reduce the wages of other individuals). **Michigan:** A non-FLSA covered employer (coverage usually met by having two or more employees and an annual volume of sales or business of at least $500,000) with two or more employees is prohibited from discriminating between employees on the basis of sex by paying wages to employees within the establishment at a rate less than the rate at which the employer pays wages to employees of the opposite sex for equal work on jobs, the performance of which requires equal skill, effort, and responsibility, and that is performed under similar working conditions. A wage differential is permitted if payment is made pursuant to one or more of the following: (1) a seniority system; (2) a merit system; (3) a system that measures earnings by quantity or quality of production; or (4) a differential based on a factor other than sex. An employer paying a wage differential in violation of the statute cannot reduce the wage rate of an employee to comply with the statute. *For assistance with Equal Pay Act issues, please contact us here.*

Statute / Regulation	Requirement
Pregnancy Accommodation PDA, 42 U.S.C. § 2000e(k); 29 C.F.R. § 1604.10; FMLA, 29 U.S.C. §§ 2612(a)(1)(A)&(D), (b)(1). Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101, *et seq.*; 29 C.F.R. §§ 1630, 1630.2(e)-(q), 1630.4.77. Pregnant Workers Fairness Act, H.R. 1065, 117th Cong. (2021).	**Federal:** Federal Pregnancy Disability Act. The federal Pregnancy Disability Act (PDA) may be implicated in determining the extent to which an employer is required to accommodate an employee's pregnancy, childbirth, or related medical conditions. Generally, under the PDA, disabilities related to pregnancy or childbirth must be treated the same as disabilities related to other medical conditions under an employer's insurance or sick leave plan, and the employer's sick leave policies must be applied to disability due to pregnancy, childbirth, or related medical conditions on the same terms. A pregnant employee may be entitled to take FMLA leave intermittently for prenatal examinations or for the employee's own serious health condition. FMLA leave may also be used for the birth or placement of a child; however, the use of intermittent leave is subject to the employer's approval. Pregnancy alone is not considered a disability for purposes of the ADA. To be considered a disability under the ADA, covered persons must have a physical or mental impairment that substantially limits a major life activity. Accordingly, pregnancy-related impairments may constitute disabilities under the ADA. An employer may not discriminate against an individual whose pregnancy-related impairment is a disability under the ADA and must provide an individual with a reasonable accommodation if needed because of a pregnancy-related disability, unless the accommodation would result in significant difficulty or expense. Among others, leave may be a reasonable accommodation that may be necessary for a pregnancy-related impairment, and may be granted in addition to what an employer may also provide under a sick leave policy. An employee may also be allowed to take leave beyond the maximum FMLA leave as a reasonable accommodation. Federal Pregnant Workers Fairness Act. Effective June 27, 2023, the Pregnant Workers Fairness Act (PWFA) requires that all employers with fifteen (15) or more employees to provide reasonable accommodations for employees and prospective employees affected by pregnancy, childbirth, or related medical conditions. Under the PWFA, the pregnancy-related condition does not need to rise to the level of a disability under the ADA. Employers must engage in an interactive process to determine what, if any, reasonable accommodation can be made to allow the employee to continue working. Employers must provide the accommodation unless it would result in significant difficulty or expense. These decisions should be made on a case-by-case basis. In addition, employers must participate in the interactive process regardless of whether non-pregnant, similarly situated employees have received accommodations.

Statute / Regulation	Requirement
	In addition, employees should be excused from performing essential job functions when making a request for accommodation if: 1. The inability to perform is temporary; 2. The employee will be able to perform the task again in the near future; and 3. The inability to perform cannot be reasonably accommodated. Under the PWFA, employers cannot require employees to take either a paid or unpaid leave where another reasonable accommodation can be made. Employers cannot force individuals to take an accommodation that is not arrived at through the interactive process. In addition, employers are prohibited from taking any adverse action in terms, conditions, or privileges of employment against an employee/ prospective employee making a request.
Mich. Comp. Laws §§37.2201(d); 37.2202(d)	**Michigan:** Employers are required to treat sex-related disabilities in the same manner as any other temporary disabilities with respect to requests such as light duty programs. "Sex" under this law includes, but is not limited to, pregnancy, childbirth, the termination of a pregnancy, or a related medical condition. *See also* **Pregnancy Leave.** *Subscribers to the base compliance materials package can locate a template Reasonable Accommodation for Pregnancy, Childbirth, and Related Medical Conditions Policy compliant with federal law here.* *Subscribers to the premium state compliance materials package can locate a template Pregnancy Accommodation Policy that is state compliant here.*
Harassment Prevention Training	**Federal:** While not expressly mandated for private sector employers, training on equal employment opportunity topics has become *de facto* mandatory for employers. Specifically, in the home care industry, training caregivers regarding handling inappropriate client behavior is also important.
Mich. Comp. Laws § 37.1212.	**Michigan:** There are no Michigan laws regulating harassment prevention training and education requirements mandated for employers. However, training is recommended to minimize employers' potential liability. Employers are further advised to comply with federal laws regulating harassment prevention training and education where applicable. However, Michigan's Persons With Disabilities Civil Rights Act requires the Department of Civil Rights to offer training programs to employers, labor organizations, and employment agencies to assist in understanding the requirements of the Act.

Statute / Regulation	Requirement
	For assistance with harassment prevention training, please contact us here.
Smoke Free Workplace	**Federal:** There are no federal laws regulating smoking in private workplaces. Employers are advised to comply with state and municipal laws regulating smoking in workplaces where applicable. **Michigan:** Smoking is prohibited in most public places in Michigan, including any workplace (and any food service establishment). A workplace is a site employing at least one person. State law is silent on the issue of mandatory smoking breaks for employees. Employers must post appropriate non-smoking signs throughout the workplace, especially at entrances and exits. Michigan has not adopted a specific sign. Clearly and conspicuously posting a sign reading "No Smoking" or the international sign for no smoking (a cigarette within a red circle and diagonal line across the circle) will comply with the law. *Subscribers to the premium state compliance materials package can locate a template Smoke Free Workplace Policy that is state compliant here.*

END OF EMPLOYMENT

Statute / Regulation	Requirement
Final Wages 29 C.F.R. § 778.106 U.S. Dep't of Labor, Wage & Hour Div., Fact Sheet #70 (Sep. 2019), https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/whdfs70.pdf Mich. Comp. Laws § 408.475; Mich. Admin. Code r. 408.9007.	**Federal:** Federal law does not address when final wages must be paid to employees following the termination of their employment. Under the FLSA, wages are considered to be due on the payday for the pay period in which the wages were earned. State law may differ, and in that case, an employer should follow the law that provides the employee with a greater benefit. **Michigan:** Employers must pay former employees final wages by the first regularly scheduled payday after termination. If final wages cannot be calculated with accuracy by the next scheduled payday, such as employees earning commissions or employees who must submit time records, the employer must pay final wages as soon as the amount of final wages can be determined with due diligence. This rule does not apply to an employee working under contract if the amount due cannot be determined until termination of the contract. In such cases, the employer must pay all wages as nearly as they can be estimated. Final wage payment must be made in full at the termination of the contract.

Health Benefits Consolidated Omnibus Budget Reconciliation Act (COBRA), 29 U.S.C. § 1166 (a)(2)&(c).	**Federal:** Employer must notify the administrator of a covered group health plan of the termination within 30 days. The administrator of the plan must provide written notice to each covered employee and qualified beneficiary of the right to continuation coverage provided under the plan within 14 days of receiving notice of the termination from the employer. **Michigan:** There are no Michigan laws regulating health benefits. Employers are advised to comply with federal laws regulating health benefits where applicable. *Subscribers to the base compliance materials package can locate a template COBRA Notice that is compliant with federal law here.*
Retirement Benefits I.R.S., Retirement Plan Participant Notices – When a Participant Stops Working, https://www.irs.gov/retirement-plans/plan-participant-employee/retirement-topics-notices.	**Federal:** The administrator of a retirement plan must provide notice to terminating employees within certain time frames that describe their retirement benefits and the procedures necessary to obtain them. **Michigan:** There are no Michigan laws regulating retirement benefits. Employers are advised to comply with federal laws regulating retirement benefits where applicable.
Unemployment Notice Mich. Admin. Code r. 421.184; 421.204.	**Federal:** There are no federal laws that address a private employer's obligation to provide separated employees with notices related to unemployment. Employers are advised to comply with state laws that address a private employer's obligation to provide separated employees with notices related to unemployment where applicable. **Michigan:** Generally. An employer must provide each worker at the time of the worker's separation from employment a copy of Form UA 1711, unemployment compensation notice to employee. This requirement is satisfied if the employer previously delivered a copy of Form UA 1711 to the worker at any time during their employment such as part of their new hire packet, or if the employer provided the worker a written statement notifying the worker how to obtain a replacement Form UA 1711 from the employer. This written statement requirement is satisfied if instructions on how to obtain Form UA 1711 from the employer are posted conspicuously in the workplace.

	If the state labor department finds that an employer failed to deliver Form UA 1711 or an equivalent before separation or fails to post adequate notices concerning replacement of a lost form, then the employer will be required to deliver Form UA 1711 or the equivalent written notice to a worker when the worker is separated from employment. The form or equivalent written notice must contain all of the following information: 1. employer's name and number of the employer's account with the department; 2. employer's address to which any request for wage or separation information, or both, must be directed; and 3. other information the department requires. *Form UA 1711 can be located here.* Multistate Workers. Whenever an individual covered by an election is separated from employment, an employer must again notify the employee as to the jurisdiction under whose unemployment compensation law services have been covered. If at the time of the termination the individual is not located in the elected jurisdiction, then the employer must notify the employee as to the procedure for filing interstate benefit claims. In addition to this notice requirement, employers must comply with the covered jurisdiction's general notice requirement, if applicable.
Other State Notice Requirements at Time of Termination	**Federal:** There are no federal laws that address notice requirements at the time of termination. Employers are advised to comply with state laws that address notice requirements at the time of termination where applicable. **Michigan:** There are no Michigan laws regulating other state notice requirements at the time of termination. Employers are advised to comply with federal laws regulating other state notice requirements at the time of termination where applicable.
Providing References for Former Employees Mich. Comp. Laws § 423.452.	**Federal:** There are no federal laws that specifically address an employer's obligations with respect to providing former employees with references. Employers are advised to comply with state laws that address an employer's obligation with respect to providing former employees with references where applicable. **Michigan:** Employers may disclose an individual's job performance information from their personnel file upon request of the individual or the individual's prospective employer.

Mich. Comp. Laws § 423.506	Employers that disclose the information in good faith are immune from civil liability for the disclosure. Employers are presumed to be acting in good faith unless the employer: (1) knew the information was false or misleading; (2) disclosed the information with reckless disregard for the truth; or (3) disclosed the information when prohibited by a state or federal statute.

Mich. Comp. Laws § 423.501	If an employer chooses to disclose the contents of an employee's personnel file, the employer must provide written notice to the employee prior to disclosure to a third party, unless that third party is part of the disclosing employer's organization or part of a labor organization representing the employee.
	
	It is advisable to include an authorization from prospective employees allowing current and former employers to release any information contained in the employee's personnel file.
	
	Personnel records do not include:
	• Employee references from third parties if the reference discloses the third party's identity.
	• Materials on the employer's staff planning concerning more than one employee, for example, salary increases, management bonus plans, promotions, and job assignments.
	• Medical reports and records made or obtained by the employer if the records or reports are available to the employee from their doctor or medical facility.
	• Personal information about someone who is not the employee if disclosing the it would invade the other person's privacy.
	• Information kept separately from other records that relate to investigations into the employee's criminal activity.
	• Records limited to grievance investigations that are:
	   ▪ kept separately; and
	   ▪ not used for certain reasons, for example, references from third parties, medical records, and information that would invade a non-employee's privacy.
	• Records maintained by an educational institution that are:
	   ▪ directly related to a student; and
	   ▪ educational records under the Family Educational Rights and Privacy Act.
	• Records that are:
	   ▪ kept by an executive, administrative, or professional employee;
	   ▪ kept in the sole possession of the record's creator; and
	   ▪ not accessible or shared with others.

	See also **Personnel Files.** *Subscribers to the premium state compliance materials package can locate a template Access to Personnel Files policy compliant with state law [here](#).*
Worker Adjustment and Retraining Notification (WARN) 29 U.S.C. § 2101, et seq; 20 CFR § 639	**Federal:** Generally, the Worker Adjustment and Retraining Notification Act (WARN) requires employers to provide written notice at least 60 calendar days in advance of plant closings and mass layoffs. WARN notice must be given to employees who reasonably may be expected to experience an employment loss as a result of the plant closing or mass layoff. Generally, employers are covered by WARN if they have 100 or more employees (excluding employees who have worked less than 6 months in the last 12 months and not excluding employees who work an average of less than 20 hours a week). WARN is triggered when a covered employer: 1. Closes a facility or discontinues an operating unit permanently or temporarily, affecting at least 50 employees, not counting part-time workers, at a single site of employment; 2. Lays off 500 or more workers (not counting part-time workers) at a single site of employment during a 30-day period; or lays off 50-499 workers (not counting part-time workers), and these layoffs constitute 33% of the employer's total active workforce (not counting part-time workers) at the single site of employment; 3. Announces a temporary layoff of less than 6 months that meets either of the two criteria above and then decides to extend the layoff for more than 6 months; or 4. Reduces the hours of work for 50 or more workers by 50% or more for each month in any 6-month period. The WARN Notice must be written in clear and specific language that employees can easily understand. It must contain at a minimum the following requirements: 1. whether the planned action is expected to be permanent or temporary and, if the entire plant is to be closed, a statement that the entire plant is to be closed; 2. the expected date when the plant closing or mass layoff will begin and the expected date when the individual employee will be separated from employment; 3. whether bumping rights exist; and 4. the name and telephone number of a company official to contact for additional information.

	If employees are represented by a union, the employer must give notice to the bargaining agent/chief elected officer of each affected union or local union official which contains specific information required in the statute. An employer may use any reasonable method of delivery designed to ensure the employee receives the written notice at least 60 days before separation. Preprinted notices regularly included in each employee's paycheck or pay envelope and verbal notices do not meet the WARN Act requirements. **Michigan:** There are no state laws regulating notice for worker retraining and adjustment. Employers are advised to comply with federal and local laws regulating notice for worker retraining and adjustment where applicable.

NOTES

Other Considerations and Notes	**Michigan:** *Subscribers to the premium state compliance materials package can locate separation and release agreement to formalize the termination of their employment relationship with the employee here.*