



# Michigan

# Human Resources LEGAL FACT SHEET

*Disclaimer: This fact sheet summarizes state laws and regulations on a variety of human resource issues for dairy farms, including wages, paystubs, deductions, child labor, and more. It is not intended to provide legal advice. The fact sheet is simply an overview of select issues with a high-level explanation of key requirements for each one, with links to more information and resources throughout the document. This fact sheet does not include all legal requirements for dairies. It was created in May 2018, and while it will be periodically updated, it may not reflect the current state of the law on every topic covered. Dairies should also review the federal fact sheet because employers—depending on size—may be required to comply with some or all of the applicable federal laws and regulations as well. By using this fact sheet you understand that there is no attorney-client relationship between you and the attorneys who were involved in developing the fact sheet. This fact sheet should not be used as a substitute for competent legal advice from a licensed attorney.*

## ARE THERE MICHIGAN STATE LAWS PERTAINING TO DAIRY FARMS ABOUT:

### HIRING

| TOPIC                         | ANSWER     | DETAILS  |
|-------------------------------|------------|--|
| Notice of Payday/<br>Pay Rate | <b>NO</b>  | Michigan law does not address payday or rate of pay notices at time of hire.   |
| Reporting                     | <b>YES</b> | <a href="#">New hires</a> and rehires must be reported to the Michigan New Hires Operations Center within 20 days of hire. |

### WAGES

| TOPIC                     | ANSWER     | DETAILS   |
|---------------------------|------------|---|
| Payday <sup>1</sup>       | <b>YES</b> | Employers must have <u>regular paydays recurring regularly</u> established in advance. These can be weekly, every 2 weeks, twice per month, monthly, or more frequently than these specified pay periods. <ul style="list-style-type: none"> <li>• If twice per month, employees need to be paid for work from the first 15 days of the month by the first day of the next month. And they need to be paid for the work from the 16th day to the end of the month by the 15th of the next month.</li> <li>• If weekly or bi-weekly, the payday needs to be no later than 14 days after the end of the work period that the wages are for.</li> <li>• Monthly payments are allowed only if the payday is on the first of the month for all wages earned during the previous calendar month.</li> </ul> |
| Final Pay <sup>2</sup>    | <b>YES</b> | The law generally requires that <u>if an employee is fired or quits</u> , wages owed are due immediately, as soon as the amount due can be determined with due diligence. Under the more specific Wage and Hour Division regulation, however, an employer must pay an employee who is fired or quits all earned wages on the regularly scheduled payday of the pay period in which the termination occurs.  |
| Overtime <sup>3</sup>     | <b>NO</b>  | Agriculture is exempt from Michigan overtime laws.  |
| Minimum Wage <sup>4</sup> | <b>YES</b> | \$9.25. Applies to employers with 2 or more employees at any one time within a calendar year. Minors under 18 may be paid 85% of the minimum wage. <u>Agricultural employees are exempt</u> from the Michigan minimum wage if they are exempt under the federal Fair Labor Standards Act.   |
| Reporting Time Pay        | <b>NO</b>  | Michigan does not have reporting time pay requirements, i.e. an employee is only required to be paid for actual hours worked.   |

# WAGES

(Continued)

| TOPIC                              | ANSWER        | DETAILS   |
|------------------------------------|---------------|---|
| Hours Worked                       | <b>NO</b>     | Michigan law does not explicitly address the definition of ‘hours worked’ for purposes of calculating compensable time. Employers should follow federal laws summarized in the federal fact sheet.  |
| Pay Stub <sup>5</sup>              | <b>YES</b>    | For each payday, <u>employers must give a paycheck statement</u> that includes: <ul style="list-style-type: none"> <li>• Hours worked by the employee</li> <li>• The gross wages paid</li> <li>• Dates for which payment is being made (pay period)</li> <li>• A list of deductions</li> </ul>  |
| Taxes and Withholding <sup>6</sup> | <b>YES</b>    | If you are required to withhold federal income taxes, you must also withhold <u>Michigan income taxes</u> . You must give your employees a statement of taxes withheld, like a federal Form W-2, 1099-MISC or 1099-R. <u>More resources</u> .<br>You must pay Michigan <u>Unemployment Insurance taxes</u> if: <ul style="list-style-type: none"> <li>• You paid cash wages to farm workers of \$20,000 or more in a quarter in the current or previous calendar year; OR,</li> <li>• You employed ten or more farm workers for agricultural services some part of a day in 20 or more weeks of the current or previous calendar year.</li> </ul> All agricultural services must be included in this calculation. Certain family employment is excluded from coverage requirements (a parent employed by their son/daughter, a person employed by their spouse, or a child under 18 employed by a parent). Unemployment taxes are paid by the employer; they are not taken out of employee pay. You can credit the amount you pay to Michigan in calculating how much you owe for federal unemployment taxes. |
| Deductions <sup>7</sup>            | <b>YES</b>    | <u>Deductions required</u> by law or courts (for ex. tax withholdings) do not require written authorization from the employee. All other deductions require the employee’s written, voluntary consent (a separate consent is required for each deduction). The deductions must be itemized. It is illegal to coerce or threaten to fire the employee to get them to agree to a deduction. Deductions for the employer’s benefit cannot take the employee’s wages below minimum wage. Refer to the federal fact sheet for additional rules on wage deductions.   |
| Bonuses <sup>8</sup>               | <b>YES/NO</b> | Bonuses are not explicitly addressed in Michigan law. Generally, discretionary bonuses would not be considered wages, while nondiscretionary bonuses should be considered wages and protected under wage law.<br>A nondiscretionary bonus is one where the amount and criteria for getting the bonus are announced in advance. For example, performance goals (like meeting somatic cell count goals) that workers know about in advance. Discretionary bonuses are ones that are not announced in advance, not expected by the employee, and not an incentive for the employee. For example, when the farm reaches a certain financial goal and decides to give all employees a bonus.<br>Employers should follow any written policy they have about paying bonuses as a best practice.  |

# WORKING CONDITIONS

| TOPIC                  | ANSWER     | DETAILS  |
|------------------------|------------|--|
| Bathrooms <sup>9</sup> | <b>YES</b> | Michigan law incorporates the federal Grade A Pasteurized Milk Ordinance. The PMO specifies that dairy farms have one or more toilets that are conveniently located, properly constructed, properly operated, and maintained in a sanitary manner. |
| Working Hours          | <b>NO</b>  | <u>No max hour or day requirements for adults</u> . See Child Labor (below) for maximum hours for minors.  |
| Rest and Meal Breaks   | <b>NO</b>  | <u>Not required for employees 18 and older</u> . See Child Labor (below) for requirements for minors. Employers that choose to provide rest and meal breaks must follow the applicable federal rules. Refer to federal fact sheet.                 |

# WORKING CONDITIONS

(Continued)

| TOPIC  | ANSWER        | DETAILS   |
|--|---------------|---|
| Labor Relations <sup>10</sup>                    | <b>NO</b>     | No provision in state law recognizing farm worker rights to organize. Right to Work Law passed in 2012.   |
| Whistleblower Protection <sup>11</sup>           | <b>YES</b>    | You cannot retaliate against an employee if, in good faith, they report a violation or suspected violation of state/federal law or they are requested to participate in an investigation, hearing, or inquiry with the government or courts.<br>Retaliation can mean firing, disciplining, threatening, or discriminating against an employee in terms of compensation, terms of employment, conditions, location, or privileges.   |
| Sick or Vacation Leave                           | <b>NO</b>     | Michigan law does not require employers to provide paid sick or vacation leave. Employers who choose to provide such benefits must follow their written policy/contract.  |
| Breaks for Nursing Mothers                       | <b>NO</b>     | No state law requiring breastfeeding accommodations in the workplace, but there may be requirements under federal law. Employers should refer to the federal fact sheet.  |
| Pregnancy Accommodations and Leave <sup>12</sup> | <b>YES/NO</b> | Michigan law does not explicitly require pregnancy accommodations or leave for private sector employees. However, per the state's anti-discrimination law, employers cannot treat a woman affected by pregnancy, childbirth, or a related medical condition differently than another employee similarly situated in their ability or inability to work; i.e., if duties would be altered for an employee with back pain, duties should be similarly altered for a pregnant employee with back pain. |
| Family and Medical Leave                         | <b>NO</b>     | Michigan has not enacted a family and medical leave law that applies to employees in the private sector. Federal law requiring unpaid leave may apply depending on the size of the employer. Employers should refer to the federal fact sheet.  |
| Jury Duty Leave <sup>13</sup>                    | <b>YES</b>    | Must permit employee to take leave because he is summoned for jury duty or serves on a jury. An employer is also prohibited from requiring an employee to in addition to jury duty if the total number of hours (jury duty and work time) would exceed the number of hours the employee normally works or extend beyond normal quitting time, unless such work is voluntary.  |
| Crime Victim and Witness Leave <sup>14</sup>     | <b>YES</b>    | Employees who are crime victims and who are subpoenaed or requested to attend court may take leave to give testimony related to a crime. Additionally, employees who are victim representatives (i.e., parent, guardian, or custodian of child or person designated to act in place of victim), must be permitted to attend court proceedings for the victim's testimony.   |
| Military and National Guard Leave <sup>15</sup>  | <b>YES</b>    | Employees must be permitted leave to be inducted into, enter, determine their physical fitness for, or perform service for the Michigan or US military or naval forces. There is no specific amount of leave time permitted, but an employer is not required to reinstate an employee who serve in the military for more than 5 years without interruption, with some exceptions.   |
| Voting Leave                                     | <b>NO</b>     | No provision in state law requiring leave time for employees to vote.   |
| School Activity Leave                            | <b>NO</b>     | Michigan law does not address leave for private sector employees to attend a child's school activity.   |

## CHILD LABOR

| TOPIC                     | ANSWER | DETAILS   |
|---------------------------|--------|---|
| Child Labor <sup>16</sup> | YES    | <p>Minors need to be given a break of at least 30 minutes when working 5 or more consecutive hours.</p> <p>Michigan's child labor law generally does not apply to farm work, so follow federal child labor laws. [Note: there are some state child labor standards relating to fruit, vegetable, and seed operations.]</p> <p>Follow federal rules on restricted or prohibited occupations.</p> |

## RECORD KEEPING

| TOPIC                                | ANSWER | DETAILS  |
|--------------------------------------|--------|--|
| Payroll <sup>17</sup>                | YES    | <p>Employers must keep <u>employee records</u> for a minimum of three years that include:</p> <ul style="list-style-type: none"> <li>• <i>employee's name</i></li> <li>• <i>address</i></li> <li>• <i>birth date</i></li> <li>• <i>occupation or classification in which employed</i></li> <li>• <i>total daily hours worked (including starting and ending times)</i></li> <li>• <i>total basic rate of pay</i></li> <li>• <i>total hours worked in each pay period</i></li> <li>• <i>total wages paid each pay period</i></li> <li>• <i>a separate itemization of deductions</i></li> <li>• <i>a listing or itemization of fringe benefits</i></li> </ul> <p>These records must be maintained for at least 3 years. Payroll records containing this information shall be open to inspection by the Department of Licensing and Regulatory Affairs at any reasonable time. Employers must also keep signed authorizations for wage deductions.</p>  |
| OSHA <sup>18</sup>                   | YES    | <p>Employers with 11 or more employees are covered by <u>MIOSHA's recordkeeping requirements</u>.</p> <p>With some exceptions, each employer is required to keep records of work-related fatalities, injuries and illnesses that meet one or more of the general recording criteria, including:</p> <ul style="list-style-type: none"> <li>• <i>Death,</i></li> <li>• <i>Days away from work,</i></li> <li>• <i>Restricted work,</i></li> <li>• <i>Transfer to another job,</i></li> <li>• <i>Medical treatment beyond first aid,</i></li> <li>• <i>Loss of consciousness, or</i></li> <li>• <i>A significant injury/illness diagnosed by a physician or other licensed health care professional.</i></li> </ul> <p>Michigan employers can use either MIOSHA or federal OSHA forms. You must save the 300 Log, the privacy case list, if one exists, the annual summary and the 301 Incident Report forms for 5 years following the end of the calendar year that these records cover. When an authorized government representative asks for the records you keep under these rules, you must provide copies of the records within 4 business hours. Records should be kept at the workplace.</p> <p>Agricultural employers, including dairy farmers, with 20 or more employees are now required to submit the Form 300A to OSHA electronically each year.</p> |
| Unemployment Insurance <sup>19</sup> | YES    | <p>Employers covered under unemployment insurance taxes must file a <u>quarterly wage report</u> with the unemployment agency which include for each employee: name, social security number, gross wages paid during each quarter, and the employer's name, address, and federal and state employer identification numbers.</p>  |
| Workers' Compensation                | NO     | <p>Michigan law does not specify guidelines for employers to maintain workers' compensation records. However, injuries and illnesses are reportable to comp providers, unless self-insured. Deaths and certain disabilities must be reported to the Bureau of Workers' Disability Compensation. You can get more information <u>here</u>. And recordkeeping rules apply under OSHA.</p>  |

## RECORD KEEPING

(Continued)

| TOPIC   | ANSWER | DETAILS  |
|---|--------|--|
| Personnel Files – Employee Access <sup>20</sup> | YES    | <p>Employers with 4 or more employees are subject to Michigan laws on employee’s right to access personnel files. A personnel file means a record kept by the employer about an employee that can be used to determine qualifications for employment, promotion, transfer, additional compensation, or disciplinary action. Examples of items included in a personnel record include: employment applications, performance evaluations, or disciplinary actions.</p> <p>Personnel records cannot include employee references if the identify of the person making the reference would be disclosed; materials about staff plans that can relate to more than one employees (salary increases, bonus plans, promotions, etc.); medical reports and records made or obtained by the employer; personal information about a person other than the employee, and more.</p> <p>If the employer keeps a personnel record, a current or former employee can request, in writing, to view their personnel record at reasonable intervals, generally not more than 2 times per calendar year unless law or collective bargaining agreements say otherwise. Reviewing it should happen at a location reasonably close to the workplace and during normal office hours.</p> |
| Federal   | YES    | There are numerous federal rules about recordkeeping. Employers should review the federal fact sheet.  |

## HUMAN RIGHTS

| TOPIC                                       | ANSWER | DETAILS   |
|---|--------|---|
| Employment Discrimination <sup>21</sup>     | YES    | <p>Michigan law prohibits <u>employment discrimination</u> based on: race, color, religion, sex, national origin, marital status, height, weight, age, pregnancy, childbirth, or related medical condition, and disability.</p> <p>Employment discrimination means bias in hiring (including during interviews), promotion, job assignments, firing, pay, benefit plans or systems, and other terms of employment.</p> <p>Employers cannot pay men and women different wages for comparable work on jobs that have virtually the same requirements in terms of skill, effort, and responsibility. Wage differences based on seniority, merit, quantity or quality of production or other factors other than sex are permitted.</p> <p>It is illegal to retaliate against employees for filing a complaint of discrimination or otherwise aiding with a complaint.</p>   |
| Harassment/ Sexual Harassment <sup>22</sup> | YES    | <p>Harassment based on a protected category, including sexual harassment, is prohibited under the Michigan law on employment discrimination (above). Harassment is unwelcome conduct. It is unlawful when (1) employees have no choice but to tolerate the harassment if they want to keep their job; (2) it is so severe that a regular person would see it as intimidating, hostile, or abusive.</p> <p>Sexual harassment includes unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature when:</p> <ul style="list-style-type: none"> <li>• <i>Engaging in such conduct is made an implicit or explicit term or condition of employment. Example: A newly hired milker is told that sexual jokes, touching and nude posters are just part of farm life and she should try to ignore it.</i></li> <li>• <i>Acceptance or rejection of such conduct is used as the basis for an employment decision affecting an employee. Example: A manager tells a worker applying for a promotion that the job would be his if he just “treated her right.”</i></li> <li>• <i>The conduct interferes with an employee’s work or creates an intimidating, hostile or offensive work environment. Example: One worker experiences repeated advances from another asking her for dates or “just to go out for drinks after work.” The worker says she isn’t interested, but the co-worker won’t take ‘no’ for an answer.</i></li> </ul> <p>It is illegal to retaliate against employees for filing a complaint of harassment or otherwise aiding with a complaint.</p> |
| Forced Labor <sup>23</sup>                  | YES    | <p>Human trafficking is illegal in Michigan. Trafficking for labor means: recruiting, harboring, transporting, provisioning, or obtaining of a person by any means for forced labor or services. <u>More details.</u></p> <p>Employers should ensure they are carefully following all visa requirements or work agreements to avoid any inadvertent violations.</p>   |

# HEALTH AND SAFETY

| TOPIC                               | ANSWER | DETAILS   |
|-------------------------------------|--------|---|
| Workers' Compensation <sup>24</sup> | YES    | <p>It is required, but only for farms with 3 or more regular employees paid hourly wages or salaries (not piece work). A regular employee means they are employed 35 or more hours per week by that same employer for 13 or more consecutive weeks during the year. Coverage is only required for those regularly employed employees. Farms who have 1 employee for 35 hours or more a week for at least 5 weeks must provide medical and hospital benefits for those employees (but not income replacement). <a href="#">More details.</a></p> <p>Employers must immediately report injuries to their insurer once they receive notice from an employee. For injuries resulting in a fatality, a specific loss, or missing 7 or more consecutive days of work, the employer must file Form WC-100 with the Workers Compensation Agency via Form WC-100. <a href="#">More details.</a></p>  |
| Health and Safety <sup>25</sup>     | YES    | <p>Michigan <a href="#">has an approved state plan</a>. Its health and safety laws are approved as "at least as effective" as federal OSHA standards, but not necessarily the same. Similar to federal OSHA, Michigan OSHA has a general duty clause that requires employers to provide employees a workplace free from recognized hazards that can cause death or serious physical harm.</p> <p>Small farming operations in Michigan are not exempt from MIOSHA regulations. Areas where the Michigan standards differ from the federal ones and are applicable to dairy farms:</p> <ul style="list-style-type: none"> <li>• <i>PPE – Focus on noise and respiratory issues. The full list of PPE that employers must provide is found <a href="#">here</a> (325.2442; 325.2442a; 325.2442b; 325.2442c – pages 26 and 27). The significant differences between federal and MI requirements as it relates to PPE are summarized <a href="#">here</a>.</i></li> <li>• <i>Accident Prevention Signs and Tags – MI has slight differences compared to federal OSHA requirements, summarized <a href="#">here</a>.</i></li> </ul> <p>See the federal fact sheet for the complete summary of OSHA requirements, which are applicable to Michigan dairies except for the minor differences noted above.</p> |
| Housing                             | YES/NO | <p>Michigan law on ag housing only applies to migratory labor. Michigan law does not explicitly address standards for permanent agricultural housing, though general landlord/tenant or public health laws may apply. Employers should follow best practices when providing housing – which includes, at minimum, a written housing agreement and properly maintaining the facilities. The FARM HR Manual has guidance around best practices for agricultural worker housing.</p>   |

## References

1. Mich. Comp. Laws §408.472
2. Mich. Comp. Laws §408.475; Mich. Admin Code, R 408.9007
3. Mich. Comp. Laws §408.414a
4. Mich. Comp. Laws. §§408.412, 408.414, 408.414b, 408.420
5. Mich. Comp. Laws §§408.477, 408.479
6. Mich. Comp. Laws §§206.8(4), 421.41(5)(a), 421.43(g)
7. Mich. Comp. Laws §§408.471, 408.477
8. Mich. Comp. Laws §§408.471, 408.473
9. Mich. Comp. Laws §288.490
10. Mich. Comp. Laws §423.14
11. Mich. Comp. Laws §15.361 et seq
12. Mich. Comp. Laws §§37.2202
13. Mich. Comp. Laws § 600.1348(1)
14. Mich. Com. Laws §§ 780.762(1), 780.762(2), 780.762(3)
15. Mich. Com. Laws §§ 32.273(1), 32.273(4)
16. Mich. Comp. Laws §§409.103, 409.104, 409.112, 409.119
17. Mich. Comp. Laws §408.479, Mich. Admin Code R 408.702(1)
18. Mich. Admin. Code R 408.22101 et seq, in particular: R 408.22133; R 408.22140; R 408.22119. 29 C.F.R. § 1904.41.
19. Mich. Comp. Laws §421.13
20. Mich. Comp. Laws §423.501 et seq
21. Mich. Comp. Laws §§37.2202, 750.556, 37.1102(2), 37.2202(1)(d)
22. Mich. Comp. Laws §37.2103(i)
23. Mich. Comp. Laws §750.462a et seq
24. Mich. Comp. Laws, §418.115(d) and (e); Mich. Admin. Code R 408.31
25. Mich. Comp. Laws §408.1011; Mich. Admin. Code R 325.2401 - 325.2448; R 408.13701 - 408.13738