

Hooray for MICHIGAN!



On the surface, there are many similarities between California and Michigan. They've got an ocean, we've got The Great Lakes. They've got the Redwood Forest, we've got Tahquamenon Falls. They've got the Golden Gate, we've got the Ambassador and The Mighty Mac.

There are, however, several differences and they go further than the name we give our soft drinks (it's "pop," not "soda") and hot dogs (it's "Coney Island," not "chili dog"). Labor and employment laws in Michigan are vastly different – and arguably more employer-friendly – than those in California.

WHAT ARE THE DIFFERENCES?

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| Discrimination & Harassment | | |
| In addition to those categories protected under federal law (race, color, religion, gender, national origin, age and disability), are there additional protected categories? | Yes. Additional protected categories include sexual orientation, genetic characteristics, political affiliation, marital status and gender appearance. | Yes. Additional protected categories include height, weight and marital status. In addition, the prohibition on age discrimination applies to any age, not just those 40 or older. |
| Is an employer automatically liable for a hostile environment created by a supervisor? | Yes. Employers are automatically liable for harassment by a supervisor, with no recourse to an affirmative defense, except for a defense that affects the amount of damages only. | No. Hostile environment harassment can only be attributed to the employer if the employer failed to take prompt and adequate remedial action after having been reasonably put on notice of the harassment. |
| Is an employer liable for harassment of an independent contractor? | Yes. | No. |
| Wage & Hour/Leaves of Absence | | |
| When must an employer pay overtime to its non-exempt employees? | Employers must pay non-exempt employees overtime for all hours worked over 8 in a work day and for all hours worked over 40 in a workweek. | Overtime is only required for all hours worked over 40 in a workweek |
| Are employees entitled to breaks, paid or unpaid? | Yes. Employees are entitled to paid rest breaks and unpaid meal breaks. | No. |
| Are employees with pregnancy-related disabilities entitled to a leave of absence? | Yes. Up to 4 months unpaid leave, in addition to applicable family leave. | No. |
| Must an employer allow an employee to use employer-provided paid sick leave for "kin care" to care for sick relatives? | Yes. An employee may use half of his/her accrued paid sick leave for "kin care." In addition, if the employer-provided paid leave may be used for any purpose (a.k.a. paid time off), half of it can be used for "kin care." | No. |
| Employment Contracts | | |
| Are non-compete agreements lawful and enforceable? | No. Except as provided by law, every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of any kind is to that extent void. | Yes. Courts may enforce a non-competition agreement provided that it is reasonable in time and place restrictions and reasonably limited to the line of business of the employer or the type of employment involved. |
| Are mandatory arbitration provisions lawful and enforceable? | Yes. Mandatory arbitration provisions are permitted, but only where arbitration is specifically authorized by law and only if arbitration is mutual, allows for full discovery, allows for class actions, and employer pays all costs unique to arbitration. In addition, such a provision cannot contain an unreasonably short statute of limitations and will be deemed unenforceable if it contains more than one "unconscionable" provision. | Yes. Michigan courts will enforce mandatory arbitration provisions where the employee expressly agrees to arbitrate his/her employment dispute, including statutory claims, and the agreement is an enforceable contract that is fair and does not waive any rights or remedies. Moreover, an unambiguous contractual provision providing for a shortened period of limitations is enforceable unless the provision would violate law or public policy. |

Savvy television and film producers are taking advantage of Michigan's Film Incentive Public Acts of 2008. Financial incentives, beautiful landscapes and the ability to portray "Main Street, USA," aren't the only reasons to look to Michigan. When doing business in Michigan, production companies should carefully consider the differences between California and Michigan employment laws and, where practicable, choose Michigan law.

Miller Canfield has experts in virtually every area of labor and employment law and can save you time, money and administrative headaches. We also know the best places in town to get a Coney Island and a pop.

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