

23-014318-CB FILED IN MY OFFICE Cathy M. Garrett WAYNE COUNTY CLERK 1/16/2026 3:20 PM Linda Woods

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

JAMES BARKER, ET AL, individually
and on behalf of similarly situated,

Plaintiffs,

Case No: 23-014318-CB

-v-

Hon. Edward Ewell, Jr.

STA MANAGEMENT, LLC d/b/a
“Domino’s Pizza,” ET AL,

Defendants.

OPINION AND ORDER

At a session of said Court held in the Coleman A.
Young Municipal Center, Detroit, Wayne County,
Michigan,
on this: 1/16/2026

PRESENT: Edward Ewell
Circuit Judge

This matter is before the Court on Plaintiffs’ Motion for Partial Summary Disposition and Defendants’ Motion for Partial Summary Disposition under MCR 2.116(C)(4) and (C)(8). For the reasons stated below, the Court will grant Plaintiffs’ motion for partial summary disposition and deny Defendants’ motion for partial summary disposition.

1. Introduction

Individual Plaintiffs were employed as pizza delivery drivers for Domino’s pizza stores in Michigan during the relevant time period of 2017-2022. Defendants operated dozens of Domino’s pizza stores in Michigan until they sold the franchises in 2022. According to Plaintiffs, Defendants paid their delivery drivers utilizing a “tip credit” at an hourly rate less than the Michigan minimum

wage and failed to reimburse delivery drivers for the full amount of the costs incurred by delivery drivers for the use of their vehicles while making deliveries for Defendants. On November 8, 2024, this Court certified two classes of delivery drivers. The first class are those drivers who were under-reimbursed for expenses incurred while making deliveries. The second class are those who Plaintiffs claim were paid less than minimum wage when Defendants violated the Workforce Opportunity Wage Act (WOWA), MCL 408.411, *et seq*, and the Improved Workforce Opportunity Wage Act (IWOWA), MCL 408.439d from June 2020 to March 2022. With regard to this second class, Plaintiffs maintain that the class member delivery drivers were paid an average of \$7.50 an hour where the Michigan minimum wage was \$9.65 in 2020 and 2021, and \$9.87 in 2022.

Plaintiffs then filed the instant motion for partial summary disposition with regard to the minimum wage class. Plaintiffs assert that Defendants did not qualify to pay their drivers less than the Michigan minimum wage under the tip-credit exemption of the IWOWA, MCL 408.934d. Defendants then filed a partial motion for summary disposition, arguing that Count I of Plaintiffs' First Amended Complaint, Violation of Michigan Wage Law, should be dismissed because the IWOWA did not become effective until February of 2025, three years after Defendants are alleged to have violated the IWOWA.

2. Standards for Determining Motions for Summary Disposition.

Plaintiffs bring their motion for summary disposition pursuant MCR 2.116(C)(10) and Defendants bring their motion for summary disposition pursuant MCR 2.116(C)(4) and (8).

"A motion for summary disposition under MCR 2.116(C)(4) tests the trial court's subject matter jurisdiction." *Mays v Governor*, 506 Mich 157, 180; 954 NW2d 139 (2020). In reviewing a motion under MCR 2.116(C)(4), the court considers the affidavits, depositions, or other documentary evidence submitted by the parties. *Meisner Law Group PC v Weston Downs Condo*

Ass'n, 321 Mich App 702, 714; 909 NW2d 890 (2017). A trial court must dismiss an action when it lacks subject matter jurisdiction. *Id.*

“A motion under MCR 2.116(C)(8) tests the legal sufficiency of a claim based on the factual allegations in the complaint.” *El-Khalil v Oakwood Healthcare, Inc*, 504 Mich 152, 159; 934 NW2d 665 (2019). The trial court must decide the motion on the pleadings alone, *id.*, and it must accept all factual allegations and reasonable inferences or conclusion that can be drawn from the facts as true. *Detroit International Bridge v Commodities Export Co*, 279 Mich App 662, 670; 760 NW2d 565 (2008).

A motion under MCR 2.116(C)(10) tests the factual support of a plaintiff’s claim. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). “Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law.” *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). “In reviewing a motion under MCR 2.116(C)(10), the Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial.” *Walsh, supra*. “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West, supra*.

3. Analysis

A. Defendants’ Motion for Partial Summary Disposition

Defendants argue that they are entitled to dismissal of Count I of Plaintiffs’ first amended complaint because the statute on which it is based was not in effect when Defendants’ violation of the statute was alleged to have occurred. Plaintiffs argue that they are entitled to a ruling that

Defendants did not qualify for the tip-credit exemption because Defendants did not satisfy the statutory criteria under any iteration of the Michigan wage laws.

Prior to 2018, the Workforce Opportunity Wage Act was in effect. MCL 408.414 addressed the tip-credit at issue and included certain provision that must be met before an employer could take a tip-credit and therefore pay employees less than the applicable minimum wage:

(a) The employee receives gratuities in the course of his or her employment.

(b) If the gratuities described in subdivision (a) plus the minimum hourly wage rate under this subsection do not equal or exceed the minimum hourly wage otherwise established under section 4, the employer pays any shortfall to the employee.

(c) The gratuities are proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contributions act, 26 USC 3101 to 3128.

(d) The employee was informed by the employer of the provisions of this section.

In 2018, a voter initiative was proposed to replace the WOWA, which would have gradually increased the minimum wage to \$12 an hour over several years and would phase out the tip-credit exemption at issue in the instant case. The initiative received the requisite number of signatures and the Michigan Legislature, rather than place it on the ballot, adopted the initiative as the Improved Workforce Opportunity Wage Act. The IWOWA, like the WOWA, permits an employer to pay an hourly minimum wage less than the standard minimum wage when certain conditions are met:

(a) The employee receives gratuities in the course of the employee's employment.

(b) The gratuities described in subdivision (a) equal or exceed the difference between the minimum hourly wage rate established under subsection (2) and the minimum hourly wage established under section 4.

(c) The gratuities are proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contribution act, 26 USC 3101 to 3128.

(d) Except as otherwise provided in this subdivision, the entirety of the gratuities are retained by the employee who receives them. This subdivision does not prohibit an employee from voluntarily sharing the employee's gratuities with another employee if the other employee is directly or indirectly part of the chain of service and the other employee's duties are not primarily managerial or supervisory.

(e) The employee's employer informed the employee of the provisions of this section, in writing, at or before the time of hire, and the employee gave written consent. MCL 408.934d(1).

After adoption of the IWOWA, but before it went into effect, the Michigan Legislature significantly amended the IWOWA, and enacted what was known as the Amended Wage Act. The Amended Wage Act significantly changed portions of the IWOWA, including delaying the increase in the minimum wage. Relevant to the present case, the Amended Wage Act reinstated the tip-credit requirements found in the WOWA.

The Amended Wage Act was in effect from early 2019 until July of 2024, when the Michigan Supreme Court issued its ruling in *Mother Justice v Attorney General*, 515 Mich 328; ___ NW3d ___ (2024). In *Mother Justice*, the Supreme Court ruled that “by adopting the Wage Act and Earned Sick Time Act and then later stripping those acts of their key features in the same legislative session, the Legislature unconstitutionally violated the people’s initiative rights. Accordingly, we hold that the Amended Wage act and the Amended Earned Sick Time Act are unconstitutional.” *Id* at 365.

The *Mother Justice* Court then turned to fashioning a remedy, first noting that the adoption of the Amended Wage Act was unconstitutional and therefore the Amended Wage Act was void. *Id* at 367. The Court then determined that the IWOWA remains in place. *Id*. Second, the Court noted that stakeholders were originally given 205 days between the IWOWA’s enactment and the

effective date, allowing employers time to prepare and comply with the new laws. *Id.* The Court then held that the IWOWA would go into effect 205 days from the opinion’s publication date of July 31, 2024. Finally, the Court determined that “employers cannot be held liable for their reasonable reliance upon the state government’s assurances that the Amended Wage Act . . . [was] good law.” *Id.* at 368.

Defendants appear to argue that the *Mother Justice* ruling leaves Plaintiffs with no recourse for Defendants’ alleged violation of Michigan wage laws. That is, Defendants seem to suggest that under the *Mother Justice* holding, no wage law was in effect between late 2018 and February of 2025, when the IWOWA became effective pursuant to the holding in *Mother Justice* and Defendants therefore can not be held liable for any violation of Michigan wage laws. Neither *Mother Justice* nor principles of fairness and justice support this assertion. The *Mother Justice*’s prospective application of IWOWA from the date of publication of the Opinion appears to be driven by the provisions of the statute dealing with the gradual increase of the minimum wage in Michigan. That is, the Court recognized that because the IWOWA contemplated a gradual increase in the minimum wage, any remedy would have to likewise apply a gradual increase in the minimum wage. *Id.* at 369. This remedy allowed employers and other interested parties time to plan for and adjust to minimum wage increases. However, for purposes of Plaintiffs’ instant arguments regarding whether Defendants met the requirements to claim a tip-credit exemption, the increase in the minimum wage is not at issue, as Plaintiffs’ are not suggesting that Defendants’ were required to follow the minimum wage increase as set forth in the IWOWA before the Michigan Legislature enacted the Amended Wage Act. Rather, Plaintiffs rely on the minimum wage rates set forth in the Amended Wage Act. To the extent that there is a question as to what the applicable minimum wage rate was during the relevant time period, that issue goes to damages

and can be resolved at a later time. Plaintiffs argue here that under the WOWA, the IWOWA, or the Amended Wage Act, Defendants paid employees less than the minimum wage.

Accordingly, the Court rejects Defendants' position that no wage laws were in effect during 2020-2022, when Defendants were alleged to have failed to pay Plaintiffs minimum wage.

B. Plaintiffs' Motion for Partial Summary Disposition

Turning now to Plaintiffs' partial motion for summary disposition, Plaintiffs argue that Defendants did not meet the requirements of MCL 408.934d(1)(c) and (e) and therefore were not entitled to the tip-credit exemption. That is, Plaintiffs argue that Defendants were required to pay the standard minimum wage rate without any credit for tips Plaintiffs may have received.

Resolution of Plaintiffs' argument involves statutory interpretation. "The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language." *Spectrum Health Hospitals v Farm Bureau Insurance Co of Michigan*, 492 Mich 503, 515; 821 NW2d 117 (2012). When interpreting a statute, a court begins with the language of the statute itself and "[u]nless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *Id.* "The meaning of statutory terms may also be deduced from their context[.]" *Manuel v Gill*, 481 Mich 637, 649-650; 753 NW2d 48 (2008).

i. Employee Declaration of Gratuities

MCL 408.934d(1)(c) requires that to qualify for the tip-credit exemption, the gratuities must be "proven gratuities as indicated by the employee's declaration for purposes of the federal insurance contribution act, 26 USC 3101 to 3128." Notably, this requirement is identical under the WOWA, the IWOWA, and the Amended Wage Act. Accordingly, although there is a conflict as to exactly which of the statutes was in effect from 2020 to 2022, the analysis is the same under any of the statutes. Under the federal insurance contribution act, "declarations" are written

statements of tips received by an employer from each employee. 26 USC 3121(q); 26 USC 6053(a). 26 USC 3121(q) provides in pertinent part:

(q) Tips included for both employee and employer taxes- For the purposes of this chapter, tips received by an employee in the course of his employment shall be considered remuneration for such employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a)[.]

26 USC 6053(a) provides in pertinent part:

(a) Reports by employees- Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a))... shall report such tips in one or more written statements furnished to his employer.

Further, 26 CFR 31.6053 sets out the requirements for written statements of tips to be submitted by employees and provides in relevant part:

(a) Requirement that tips be reported- (1) In general. An employee who receives, in the course of employment by an employer, tips that constitute wages as defined in section 3121(a). . . must furnish to the employer a statement, or statements, disclosing the total amount of tips received by the employee in the course of employment by the employer.

* * *

(b) Statement for use in report tips- (1) In general. The statement described in paragraph (a) of this section can be provided on paper or transmitted electronically. The statement must be signed by the employee and must disclose:

* * *

(iv) The total amount of tips received by the employee during the period covered by the statement which are required to be reported to the employer.

(2) Form of statement- (i) In general. No particular form is prescribed for use in furnishing the statement required by this section. The statement may be furnished on paper or transmitted electronically. An electronic system and all tip statements generated

by that system must meet the requirements of paragraph (d) of this section.

* * *

(d) Requirements for electronic systems- (1) In general. The electronic system must ensure that the information received is the information transmitted by the employee and must document all occasions of access that result in the transmission of a tip statement. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted.

* * *

3) Signature. The electronic tip statement must be signed by the employee. The electronic signature must identify the employee transmitting the electronic tip statement and must authenticate and verify the transmission. For this purpose, the terms authenticate and verify have the same meaning as they do when applied to a written signature on a paper tip statement. Any form of electronic signature that satisfies the foregoing requirements is permissible.

According to Defendants, employees were paid a base salary of between \$7.00 an hour to \$8.50 an hour in wages, which is more than the tipped minimum wage, but less than the standard minimum wage. According to Defendant, employees were required to report tips earned per shift in accordance with the employee handbook and “IRS laws.” Defendant fails to explain what mechanism Plaintiffs were given for making the reports or whether or not Plaintiffs actually made the required reports. Defendant further explains that the majority of tips for delivery drivers came from customer credit cards, which were automatically logged for each driver using a point of sale (POS) system. Employees were responsible for reporting any cash tips. Employees received a check each pay period which stated the hours worked, the hourly rate, the overtime pay, and any tips received. As with any check, employees were required to sign the paper check before depositing or cashing the check.

Defendants assert that the paystub qualifies as a written statement and the signed paycheck qualifies as a signed declaration under the relevant statutes.

Plaintiffs' paystubs do not qualify as written statements because they were not prepared by Plaintiffs. 26 CFR 31.6053(a). Rather, Defendants reported tips made by credit card through POS software. Further, it appears no record of cash tips was ever made by drivers or kept by Defendants. Ronnie Asmar Jr, the corporate representative for Defendant Northwest Professionals, testified at his deposition that the stores did not collect any information from drivers about how much the drivers received in cash tips. The lack of a record of cash tips was supported by class representative Aryn Delany, who worked as both a manager and delivery driver for Defendants during the relevant time period. In an affidavit, Delany states that she never made statements or was required to sign a statement showing the amount of tips she received and it was not Defendants' practice to require delivery drivers to sign any such statement.

The fact that the POS system recorded tips paid by credit card is insufficient to amount to a "written statement" by an employee because 26 CFR 31.6053(d) requires that the POS system be designed to "make it reasonably certain that the person accessing the system and transmitting the statement is the employee identified in the statement transmitted." In this case there is no evidence that the employees themselves accessed the POS system to report their tips. Rather, tip information was transmitted automatically.

Paystubs also do not meet the requirements of a written statement because they do not include the "total amount of tips received by the employees during the period covered by the statement." 26 CFR 31.6053(b)(iv). As noted above, Defendants did not collect from drivers any information about cash tips. Rather, the paystubs only included those tips that were paid by credit card through Defendants' POS system.

Further, the fact that Plaintiffs may have signed their checks does not transform the paychecks into a signed declaration. The paystubs were not prepared by Plaintiffs and do not include tip information supplied by Plaintiffs, including the amount of cash tips received by Plaintiffs.

In order for an employer to be eligible for the tip-credit exemption, the claimed gratuities must be proven by an employee's declaration. MCL 408.934d(1)(c). Because Plaintiffs did not issue statements declaring their cash and credit card tips, see 26 USC 3121(q) and 26 USC 6053(a), the tips were not proven gratuities. Accordingly, Defendants were not entitled, under the WOWA, the IWOWA, or the Amended Wage Act to claim a tip-credit against the standard minimum wage requirements. See MCL 408.934d. Notably, this finding does not run afoul of the *Mother Justice* Court's concern that employers should not be held liable for reliance upon the Amended Wage Act as good law, see *Mother Justice*, *supra* at 367-368, as Defendants were required to have employees declare their wages under any of the Michigan wage laws.

ii. Notice Requirement

Plaintiffs also argue that Defendants are not entitled to claim the tip-credit exemption because they did not inform Plaintiffs of the provisions of MCL 408.934d(1) in writing, at or before the time of hire, and did not receive Plaintiffs' written consent to use of the tip-credit exemption. MCL 408.934d(1)(e). Notably, the IWOWA, as compared to the WOWA and the Amended Wage Act, contains the additional requirement that notice be in writing. Under the WOWA and Amended Wage Act, the only requirement was that Defendants provide notice of the tip-credit exemption requirements.

Defendants assert that Plaintiffs were given adequate notice of the provisions of MCL 408.934d(1) in the employee handbook, which employees were required to read and sign before commencing employment. The handbook provides in pertinent part:

Notice of Tip Credit Provision

I understand and acknowledge that I will receive different pay rates depending on my shift assignments and the work I am performing as set forth below, unless otherwise modified by my employer.

My employer will take a tip credit against the minimum wage in the amount credit card tips collected by employee. Additional cash tips will be claimed as needed on behalf of each employee to reach minimum wage. This credit is automatically treated as reported tips for all payroll tax purposes.

I understand that I have the right to retain all tips that I receive from customers. As a tipped employee, it is my responsibility to track and report all tips received. I will be held accountable for reporting tips accurately.

I understand and agree that my overtime rate, if applicable, will be based on the cash wage for the job function that I am performing at the time that the overtime occurs. Domino's Pizza has an open door policy. I understand that I can contact the payroll department at payroll@stamanagement.com if I have any questions pertaining to this or any other wage issue.

I understand that this is not a contract of employment. I am an employee at will and either I or the company may terminate my employment at any time and for any reason with or without notice. I further acknowledge that the company reserves the right to modify the terms and conditions of my employment including, but not limited to, the cash wage rates referenced in this document.

I hereby acknowledge that I have received and read this notice.

Employee Signature

Date

This notice in the employee handbook, which Plaintiffs do not contest was read and signed by each employee, is sufficient to inform Defendants' employees of the provisions of MCL 408.934d(1). First, the notice informs the employee that they will receive tips in the course of their employment. MCL 408.934d(1)(a). Next, the notice informs the employee that the employer will take a credit for tips until the hourly minimum wage is met and that cash tips will also be

claimed if needed to reach the hourly minimum wage. MCL 408.934d(1)(b). Plaintiffs assert that proper notice was not given for MCL 408.934d(1)(b) because the notice does not inform the employee of the state minimum wage or that if the employee's wages plus tips did not meet the minimum wage, that Defendants would be responsible for making up the difference. However, employers do not have to explain the tip credit; they only are required to inform employees that they plan to take a tip credit. *Kilgore v Outback Steakhouse of Florida, Inc*, 160 F 3d 294, 298-299 (6th Cir 1998). Defendants were not required to go beyond notice to Plaintiffs that Defendants were planning on taking the tip credit such that tips would be used to meet the state minimum wage.

Next, the notice in the employee handbook indicates that it is the employee's responsibility to track and report all tips received and that the employee will be held accountable for reporting tips accurately. This statement is sufficient notice of the requirements of MCL 408.934d(c). Finally, the employee is notified that he or she has the right to retain all tips that are received from customers. MCL 408.934d(d).

Defendants were not required to explain the tip-credit exemption, and the notice of tip credit provision in the handbook was sufficient to inform employees of the provisions of MCL 408.934d(1). Accordingly, Plaintiffs' assertion that Defendants are not entitled to the tip-credit exemption based on inadequate notice, under any of the Michigan wage laws, is without merit.

iii. Damages

Defendants also make a brief argument that even if Plaintiffs' motion is granted, damages should be strictly limited to the amount by which their actual compensation fell short of the applicable minimum wage. Defendants' argument is premature, as this Opinion and Order will not address the issue of damages, which has not been fully briefed by the parties.

On the basis of the foregoing opinion;

IT IS ORDERED that Plaintiffs' Partial Motion for Summary Disposition is hereby **GRANTED**.

IT IS FURTHER ORDERED that Defendants' Motion for Partial Summary Disposition Under MCR 2.116(C)(4) and (C)(8) is hereby **DENIED**.

IT IS FURTHER ORDERED that Defendants, during the relevant time period, were not entitled to take a tip-credit exemption and were therefore not exempt from paying Plaintiffs in the minimum wage class the applicable minimum hourly wage.

IT IS FURTHER ORDERED that this Order does not resolve the last pending claim and does not close the case.

IT IS SO ORDERED.

DATED: 1/16/2026

/s/Edward Ewell
Circuit Judge
Edward Ewell