Legislative Analysis

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UNEMPLOYMENT INSURANCE AMENDMENTS

House Bill 4781
Sponsor: Rep. Wayne Schmidt

House Bill 4782
Sponsor: Rep. Joe Haveman
Committee: Commerce

Complete to 6-20-11

A SUMMARY OF HOUSE BILLS 4781-4782 AS INTRODUCED 6-16-11

The bills would make several amendments to the Michigan Employment Security Act concerning (1) the calculation of a claimant's weekly benefit amount, (2) the designation of employers as "seasonal employers," (3) the work search requirements, and (4) disqualifying reasons of separation from employment.

House Bill 4781

Weekly Benefit Amount

House Bill 4781 would amend the Michigan Employment Security Act (MESA) to revise the calculation used by the Unemployment Insurance Agency (UIA) to determine a claimant's weekly benefit amount (WBA).

Under current law, the WBA is calculated as 4.1% of the wages earned in the quarter in the base period with the highest wages ("high quarter wages"), plus $6 per dependent (up to 5), capped at $362.

Under House Bill 4781, the WBA would be calculated as 47% of the individual's prior average weekly wage (AWW), plus $6 per dependent (up to 5), capped at $362. The prior average weekly wage would be the claimant's total base period wages divided by 52. The new calculation would first be used for benefit years beginning on or after January 15, 2012.[1]

Seasonal Employers

Under current law, workers who work for "seasonal" employers are generally not eligible for benefits if they have reasonable assurance from their employer that at the end of the seasonal work period that they will be rehired when the new season begins. Seasonal workers are eligible for benefits for periods of unemployment during the normal work period. If a worker was given reasonable assurance of continuing employment and was

[1] The January 15, 2012, date coincides with the date after which claimants with new benefit years are allowed a maximum of 20 weeks of benefits, as provided for in Public Act 14 of 2010 (House Bill 4408).

denied benefits during the time between seasons but is not hired in the subsequent season, the worker may receive retroactive payments.

To be designated as a "seasonal" employer by the UIA, an employer must submit an application to the UIA requesting such a designation at least 20 days before the beginning date of a normal seasonal work period.[2] At the time of the application, the employer must also post a copy of the application on its premises.

Under the act, the UIA designates an employer as a seasonal employer if the employer offers work in "seasonal employment." The determination of whether employment is seasonal in nature depends on the nature of both the industry as a whole and the specific activities of the employer. An employer can offer seasonal employment, but if its industry is not seasonal in nature, it cannot be designated as seasonal by the UIA. Moreover, the employer must, itself, operate seasonally as well.

The act defines "seasonal employment" as employment in an industry that (1) customarily operates during regularly recurring periods of 26 weeks or less in any 52 consecutive week period or (2) customarily employs at least half of its employees for regularly recurring periods of 26 weeks or less within a period of 52 consecutive weeks.[3]

House Bill 4781 amends the definition of "seasonal employment" to mean employment for an employer (rather than in an industry) that (1) customarily employs at least half of its employees for regulatory recurring periods of 26 weeks or less within a period of 52 consecutive weeks; or (2) customarily requires employees for peak employment periods, such as holiday work or work with a predetermined beginning and ending date that does not exceed 26 weeks.

House Bill 4782

The general principle of unemployment insurance is that benefits are to be payable to workers who have lost their jobs through no fault of their own and who are able, available, and actively seeking work. Accordingly, each state's UI law contains provisions basing the determination of initial and continuing eligibility for benefits, in part, on the reason for the separation from employment and the worker's ability to work, availability for work, work search activities, and refusal to work.[4] House Bill 4782 amends the MESA by adding to the work search requirements, expanding the definition of "suitable work", and expanding the reasons for separation from employment that would disqualify workers for benefits.

[2] See UIA Form 1155, http://www.michigan.gov/documents/uia_UC1155_76087_7.pdf.

[3] According to the U.S. Department of Labor, 15 other states have similar provisions concerning seasonal employment. See the 2010 edition of *Comparison of State Unemployment Laws*, U.S. Department of Labor, Employment and Training Administration, http://www.ows.doleta.gov/unemploy/comparison2010.asp.

[4] For an overview of these requirements and other nonmonetary eligibility provisions see the 2010 edition of *Comparison of State Unemployment Laws.*

Work Search Requirements

The MESA provides that a person is disqualified from receiving benefits if he or she fails without good cause to apply for available *suitable work* after receiving from the employment office (the local Michigan Works! Agency) or the UIA, notice of the availability of that work.

House Bill 4782 alters this requirement to specify that a person must apply for available work "diligently" and must apply for work with employers who could reasonably be expected to have suitable work.[5]

Suitable Work

The MESA provides that in determining whether work is "suitable" for an individual, the UIA shall consider the following factors:

- The degree of risk involved to the individual's health, safety, and morals.
- The individual's physical fitness and prior training.
- The individual's length of unemployment and prospects for securing local work in the individual's customary occupation.
- The distance of the available work from the individual's residence.

The MESA further provides that the UIA shall consider the individual's experience and prior earnings, although an individual who refuses otherwise suitable work must be denied benefits if the pay rate is at least 70% of the gross pay rate in the individual's prior employment.

House Bill 4782 provides that beginning September 1, 2011, after an individual has received benefits for half of their available benefit weeks in the benefit year, work would not be considered to be unsuitable if it is outside of the individual's training and experience or if the pay rate of the work is at least the minimum wage and at least 120% of the individual's weekly benefit amount.

Disqualifying Reasons for Separation

The MESA provides that an individual shall be disqualified from benefits if the individual is suspended or discharged for misconduct connected with the individual's work.[6]

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[5] Additionally, Section 29(1)(e) of the MESA disqualifies a claimant if he or she fails without good cause to accept suitable work offered to the individual. On this point, the UIA notes that "[c]ourts have said that the offer of work must be specific, as far as hours, wages, fringe benefits, conditions, and duties of the job. The offer must be made known to the particular worker (verbally or in writing), not just posted in the workplace." See, http://www.michigan.gov/uia/0,1607,7-118-26831_27122_27127-78544--,00.html.

[6] On this point, the UIA has noted, "[u]nemployment compensation cases say that to be misconduct, the actions by the worker must be harmful to the interests of the employer, and must be done intentionally or in disregard of the employer's interests. Actions that are grossly negligent will also be considered misconduct. A single incident of misconduct or of gross negligence may be enough to disqualify a worker from unemployment benefits. A worker who commits many infractions may be disqualified, even if none of the infractions, alone, would be misconduct resulting in disqualification. However, the final incident in a series, for which the worker is fired, must itself show an intentional disregard of the employer's interests." Additionally, the UIA has noted, "If a worker is consistently

House Bill 4782 adds that an individual would be disqualified for benefits if the individual was suspended or discharged because of the individual's failure to perform the work correctly or meet normal production quotas, and for consistent tardiness or absence without justifiable cause.

Individuals disqualified for benefits for these added reasons could requalify for benefits if they complete 13 requalifying weeks. A requalifying week is a week in which the individual (1) earns or receives remuneration in an amount equal to at least 1/13 of the minimum amount needed in a calendar quarter of the base period for an individual to qualify for benefits, rounded down to the nearest whole dollar,[7] or (2) otherwise meets all of the requirements of the act to receive benefits if the individual had not been disqualified.

FISCAL IMPACT:

The bill would generally serve to reduce benefit outlays from the Unemployment Trust Fund, by expanding the work search requirements and what is considered to be "suitable work."

Fiscal Analyst: Mark Wolf

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absent or tardy from work, without a justifiable excuse, the worker could be disqualified from receiving benefits. If a worker is discharged based on an arrest occurring on the worker's own time and not connected with the job, then the worker would not be disqualified. If a worker is discharged for being unable to meet production quotas, but is otherwise a co-operative worker, that worker will probably not be disqualified from receiving unemployment benefits." See, http://www.michigan.gov/uia/0,1607,7-118-26831_27122_27127-78538--,00.html.

[7] Under Section 46 (MCL 421.46), the minimum high quarter wage must be at least 388.06 multiplied by the state minimum wage ($7.40), rounded down to the nearest whole dollar. To have a requalifying week under this provision, a disqualified individual shall have remuneration if at least $220 ($2,871 ÷ 13 = $220.86). Under the act, disqualified individuals with the same requalifying requirement - such as those disqualified for failing to apply for available work or refusing to accept an offer of suitable work - are eligible for the maximum amount of weeks of benefits otherwise available (had they not been disqualified) minus the lesser of (1) the number of requalifying weeks [13] or (2) the number of weeks remaining on the claim. See Sec. 29(4)(f) of the act. The bill does not expand this provision to include individuals disqualified for the reasons added by the bill.