

HOUSE SUBSTITUTE FOR
SENATE BILL NO. 427

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 43 (MCL 421.43), as amended by 2014 PA 241.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 43. Except as otherwise provided in section 42(6), the
2 term "employment" does not include any of the following:

3 (a) Services performed by an individual who is an alien
4 admitted to the United States to perform services described in
5 either of the following:

6 (i) Sections 214(c) and 101(a)(15)(H)(ii)(a) of the immigration
7 and nationality act, 8 USC 1184 and 8 USC 1101(a)(15)(H)(ii)(a).

8 (ii) Beginning January 1, 2014, services described in section
9 101(a)(15)(H)(ii)(b) of the immigration and nationality act, 8 USC
10 1101(a)(15)(H)(ii)(b), and services described in 22 CFR 62.28 to
11 62.32 that are performed by a holder of a J-1 exchange visitor

1 program visa issued under section 101(a)(15)(J) of the immigration
2 and nationality act, 8 USC 1101(a)(15)(J), and the mutual
3 educational and cultural exchange act of 1961, 22 USC 2451 to 2464.
4 The employer claiming an exclusion under this subparagraph must be
5 the ~~petitioner~~**EMPLOYER** of an H-2B visa holder, as documented on an
6 approved I-129 petition **OR SUCCESSOR FORM** for a nonimmigrant
7 worker, or the ~~sponsor~~**EMPLOYER** of the J-1 exchange visitor program
8 visa holder, as documented in the DS-2019 **OR SUCCESSOR** form. The
9 employer shall maintain the supporting documentation for the claim
10 for 6 years and, upon request, provide the unemployment agency with
11 that documentation for compliance and verification purposes. This
12 subparagraph is intended to apply retroactively to include the full
13 calendar year.

14 (b) Service performed in the employ of another state or its
15 political subdivisions, or of an instrumentality of another state
16 or its political subdivisions, except as otherwise provided in
17 section 42(9); and service performed in the employ of the United
18 States government or an instrumentality of the United States exempt
19 under the constitution of the United States from the contributions
20 imposed by this act. However, to the extent that the congress of
21 the United States permits states to require instrumentalities of
22 the United States to make payments into an unemployment fund under
23 a state unemployment compensation law, this act applies to the
24 instrumentalities and to services performed for the
25 instrumentalities in the same manner, to the same extent, and on
26 the same terms as to all other employers, employing units,
27 individuals, and services. If this state is not certified for any

1 year by the appropriate agency of the United States under section
2 3304(c) of the federal unemployment tax act, chapter 23 of subtitle
3 C of the internal revenue code of 1986, 26 USC 3304, the payments
4 required of the instrumentalities with respect to the year shall be
5 refunded by the commission from the fund in the same manner and
6 within the same period as provided in section 16 with respect to
7 contributions erroneously collected.

8 (c) Service with respect to which unemployment compensation is
9 payable under an unemployment compensation system established by an
10 act of congress. However, the commission shall enter into
11 agreements with the proper agencies under the act of congress,
12 which agreements take effect 10 days after publication of the
13 agreements in the manner provided in section 4 for regulations to
14 provide reciprocal treatment to individuals who have, after
15 acquiring potential rights to benefits under this act, acquired
16 rights to unemployment compensation under the act of congress, or
17 who have, after acquiring potential rights to unemployment
18 compensation under the act of congress, acquired rights to benefits
19 under this act.

20 (d) Agricultural labor. As used in this subdivision,
21 "agricultural labor" includes all of the following:

22 (i) Service performed on a farm, in the employ of any person,
23 in connection with cultivating the soil, or in connection with
24 raising or harvesting an agricultural or horticultural commodity,
25 including the raising, shearing, feeding, caring for, training, and
26 management of livestock, bees, poultry, and fur-bearing animals and
27 wildlife.

1 (ii) Service performed in the employ of the owner, tenant, or
2 other operator of a farm in connection with the operation,
3 management, conservation, improvement, or maintenance of a farm and
4 its tools and equipment, or in salvaging timber or clearing land of
5 brush and other debris left by a hurricane, if the major part of
6 the service is performed on a farm.

7 (iii) Service performed in connection with the production or
8 harvesting of a commodity defined as an agricultural commodity in
9 section 15(g) of the agricultural marketing act, 12 USC 1141j, in
10 connection with the ginning of cotton, or the operation or
11 maintenance of ditches, canals, reservoirs, or waterways not owned
12 or operated for profit, used exclusively for supplying and storing
13 water for farming purposes.

14 (iv) Service performed in the employ of the operator of a farm
15 in handling, planting, drying, packing, packaging, processing,
16 freezing, grading, storing, or delivering to storage, to market, or
17 to a carrier for transportation to market, in its unmanufactured
18 state, an agricultural or horticultural commodity, if the operator
19 produced more than 1/2 of the commodity for which the service is
20 performed.

21 (v) Service performed in the employ of a group of operators of
22 farms or a cooperative organization of which the operators are
23 members, in the performance of service described in subparagraph
24 (iv), but only if the operators produced more than 1/2 of the
25 commodity for which the services are performed.

26 (vi) Service performed on a farm operated for profit if the
27 service is not in the course of the employer's trade or business.

1 (vii) Subparagraphs (iv) and (v) do not apply to service
2 performed in connection with commercial canning or commercial
3 freezing or in connection with an agricultural or horticultural
4 commodity after its delivery to a terminal market for distribution
5 for consumption.

6 (viii) As used in this subdivision, "farm" includes stock,
7 dairy, poultry, fruit, fur-bearing animals, truck farms,
8 plantations, ranches, nurseries, ranges, and greenhouses, or other
9 similar structures used primarily for the raising of agricultural
10 or horticultural commodities.

11 (ix) Agricultural labor is not excluded from the term
12 employment if the labor is performed for an employer as defined in
13 section 41(5).

14 (e) Domestic service in a private home, local college club, or
15 local chapter of a college fraternity or sorority not operated for
16 profit. Domestic service is not excluded from the term "employment"
17 if performed for an employer as defined in section 41(6).

18 (f) Service as an officer or member of a crew of an American
19 vessel performed on or in connection with the vessel, except a
20 vessel of less than 200 horsepower, if the operating office from
21 which the operations of the vessel operating on navigable waters
22 within or without the United States are ordinarily and regularly
23 supervised, managed, directed, and controlled is without this
24 state; and service performed by an individual in or as an officer
25 or member of the crew of a vessel while it is engaged in the
26 catching, taking, or harvesting of any kind of fish including
27 service performed by an individual as an ordinary incident to that

1 activity, except service performed on or in connection with a
2 vessel of more than 10 net tons determined in the manner provided
3 for determining the register tonnage of merchant vessels under the
4 laws of the United States.

5 (g) Service performed by an individual in the employ of the
6 individual's son, daughter, or spouse, and service performed by a
7 child less than 18 years of age in the employ of the child's
8 parent.

9 (h) Service performed by real estate salespersons, sales
10 representatives of investment companies, and agents or solicitors
11 of insurance companies who are compensated principally or wholly on
12 a commission basis.

13 (i) Service performed within this state by an individual who
14 is not a citizen of the United States or service performed within
15 this state for an employer other than an American employer as
16 defined in section 42(12)(d), if the service is incidental to the
17 individual's service in a foreign country in which the base of
18 operation is maintained or from which the service is directed or
19 controlled.

20 (j) Service covered by an arrangement between the commission
21 and the agency charged with the administration of another state or
22 federal unemployment compensation law under which all service
23 performed by an individual for an employing unit during the period
24 covered by the employing unit's approved election. Service
25 described in this subdivision is considered to be performed
26 entirely within the agency's state or under federal law.

27 (k) Service performed by an individual in a calendar quarter

1 in the employ of an organization exempt from income tax under
2 section 501(a) of the internal revenue code of 1986, 26 USC 501,
3 other than an organization described in section 401(a) of the
4 internal revenue code of 1986, 26 USC 401, or under section 521 of
5 the internal revenue code of 1986, 26 USC 521, if the remuneration
6 earned is less than \$50.00.

7 (l) Service performed in the employ of a school, college, or
8 university, if the service is performed by any of the following:

9 (i) By a person who is primarily a student at the school,
10 college, or university. For the purpose of this subparagraph, a
11 person is considered to be "primarily a student" if the individual
12 is enrolled in an institution, is pursuing a course of study for
13 academic credit, and while enrolled normally works 30 hours or less
14 per week for the institution.

15 (ii) By a spouse of a student, if given written notice at the
16 start of the service that the employment is under a program to
17 provide financial assistance to the student and that the employment
18 will not be covered by a program of unemployment compensation.

19 (m) Service performed by an individual less than 22 years of
20 age who is enrolled, at a nonprofit or public educational
21 institution that normally maintains a regular faculty and
22 curriculum and normally has a regularly organized body of students
23 in attendance at the place where its educational activities are
24 carried on, as a student in a full-time program, taken for credit
25 at the institution, which program combines academic instruction
26 with work experience, if the service is an integral part of the
27 program and the institution has certified that fact to the

1 employer. This subdivision does not apply to service performed in a
2 program established for or on behalf of an employer or group of
3 employers.

4 (n) Service performed in the employ of a hospital, if the
5 service is performed by a patient of the hospital as defined in
6 section 53(1).

7 (o) For purposes of section 42(8), (9), and (10), "employment"
8 does not apply to service performed in any of the following
9 situations:

10 (i) In the employ of a church or a convention or association of
11 churches or an organization that is operated primarily for
12 religious purposes and that is operated, supervised, controlled, or
13 principally supported by a church or a convention or association of
14 churches.

15 (ii) By an ordained, commissioned, or licensed minister of a
16 church in the exercise of the ministry or by a member of a
17 religious order in the exercise of duties required by the order.

18 (iii) Before January 1, 1978, in the employ of a school that is
19 not an institution of higher education and which service is also
20 excluded from the term "employment" as defined in section
21 3306(c)(8) of the federal unemployment tax act, chapter 23 of the
22 internal revenue code of 1986, 26 USC 3306. After December 31,
23 1977, in the employ of a governmental entity as defined in section
24 50a, if the service is performed by an individual in any of the
25 following capacities:

26 (A) As an elected official.

27 (B) As a member of a legislative body or of the judiciary.

1 (C) As a military employee of the state national guard or air
2 national guard.

3 (D) As an employee serving on a temporary basis in case of
4 fire, storm, snow, earthquake, flood, or similar emergency.

5 (E) In a position that, under or pursuant to the laws of this
6 state, is designated as a major nontenured policymaking or advisory
7 position, or a policymaking or advisory position, the performance
8 of the duties of which ordinarily does not require more than 8
9 hours per week.

10 (iv) By an individual receiving rehabilitation or remunerative
11 work in a facility conducted for the purpose of carrying out a
12 program of rehabilitation for individuals whose earning capacity is
13 impaired by age, physical or mental deficiency, or injury, or of
14 providing remunerative work for individuals who because of their
15 impaired physical or mental capacity cannot be readily absorbed in
16 the competitive labor market.

17 (v) As part of an unemployment work-relief or work-training
18 program assisted or financed in whole or in part by a federal
19 agency or an agency of a state or political subdivision of a state
20 by an individual receiving the work relief or work training.

21 (vi) By an inmate of a custodial or penal institution.

22 (vii) By an individual hired by a state department or recipient
23 governmental entity through a summer youth employment program
24 established under the Michigan youth corps act, 1983 PA 69, MCL
25 409.221 to 409.229, or an individual hired by a state department
26 through a summer youth employment program administered by the
27 department of natural resources or the department of

1 transportation.

2 (p) Service performed by an individual less than 18 years of
3 age in the delivery or distribution of newspapers or shopping news,
4 not including delivery or distribution to a point for subsequent
5 delivery or distribution.

6 (q) Service performed for an employing unit other than a
7 governmental entity or nonprofit organization and that is any of
8 the following:

9 (i) Service performed by an individual while the individual was
10 a minor student regularly attending either a public or a private
11 school below the college level and the individual's employment
12 during the week was any of the following:

13 (A) Less than the scheduled hours the individual would have
14 worked in the department or establishment in which the employment
15 occurred if the individual were not a student.

16 (B) Within the customary vacation days or vacation periods of
17 the school, following which the individual actually returns to
18 school.

19 (C) With an employer as a formal and accredited part of the
20 regular curriculum of the individual's school.

21 (ii) Service performed by a college student of any age, but
22 only if the student's employment is a formal and accredited part of
23 the regular curriculum of the school.

24 (iii) Service performed by an individual as a member of a band
25 or orchestra, but only if the service does not represent the
26 principal occupation of the individual.

27 (r) Subject to subdivision (s), services performed as a direct

1 seller, if the person is engaged in either of the following:

2 (i) The trade or business of selling, or soliciting the sale
3 of, consumer products or services to any buyer on a buy-sell basis,
4 a deposit-commission basis, or any similar basis that the
5 commission or the U.S. department of labor designates by rule or
6 regulation, for resale by the buyer or any other person in the home
7 or otherwise than in a permanent retail establishment.

8 (ii) The trade or business of selling, or soliciting the sale
9 of, consumer products or services in the home or otherwise than in
10 a permanent retail establishment.

11 (s) The exclusion of services under subdivision (r) applies
12 only if both of the following are met:

13 (i) Substantially all the cash or other remuneration, for the
14 performance of the services described in subdivision (r) is
15 directly related to sales or other output, including the
16 performance of services, rather than to the number of hours worked.

17 (ii) The services are performed according to a written contract
18 that provides that the person performing the services will not be
19 treated as an employee with respect to those services for federal
20 tax purposes.

21 (t) Service performed by an individual as a product
22 demonstrator or product merchandiser if the service is performed
23 under a written contract between the individual and a person whose
24 principal business is obtaining the services of product
25 demonstrators and product merchandisers for third parties for
26 product demonstration and product merchandising purposes, and both
27 in contract and in fact, the individual meets all of the following

1 conditions:

2 (i) Is not treated as an employee with respect to those
3 services for federal unemployment tax purposes.

4 (ii) Is compensated for each job, or the compensation is based
5 on factors that relate to the work performed.

6 (iii) Determines the method of performing the service.

7 (iv) Provides the equipment used to perform the service.

8 (v) Is responsible for the completion of a specific job and is
9 liable for any failure to complete the job.

10 (vi) Pays all expenses, and the opportunity for profit or loss
11 rests solely with the individual.

12 (vii) Is responsible for operating costs, fuel, repairs,
13 supplies, and motor vehicle insurance.

14 (viii) As used in this subdivision:

15 (A) "Product demonstrator" means an individual who, on a
16 temporary, part-time basis, demonstrates or gives away samples of a
17 food or other product as part of an advertising or sales promotion
18 for the product and who is not otherwise directly employed by the
19 manufacturer, distributor, or retailer.

20 (B) "Product merchandiser" means an individual who, on a
21 temporary, part-time basis, builds or resets a product display and
22 who is not otherwise directly employed by the manufacturer,
23 distributor, or retailer.

24 (C) "Third party" means a manufacturer or broker.

25 (u) Service performed in an Americorps program but only if
26 both of the following conditions are met:

27 (i) The individual performed the service under a contract or

1 agreement providing for a guaranteed stipend opportunity.

2 (ii) The individual received the full amount of the guaranteed
3 stipend before the ending date of the contract or agreement.

4 (v) Service performed by an individual as an oil, gas, or
5 mineral landman under a contract with a private person or private
6 entity if substantially all remuneration, including payment at a
7 daily rate paid in cash or otherwise for the performance of the
8 service, is directly related to the individual's completion of the
9 specific tasks contracted for rather than the number of hours
10 worked, and if the contract provides that the individual is an
11 independent contractor and not an employee with respect to the
12 contracted service. As used in this subdivision, "landman" means an
13 individual who is engaged in 1 or more of the following:

14 (i) Negotiating the acquisition or divestiture of oil, gas, or
15 mineral rights.

16 (ii) Negotiating business agreements that provide for the
17 exploration for, transportation of, or development of oil, gas, or
18 minerals.

19 (iii) Determining the ownership of oil, gas, or minerals through
20 research of public and private records.

21 (iv) Reviewing the status of the title to, and curing title
22 defects and deficiencies associated with, the ownership of oil,
23 gas, or minerals.

24 (v) Managing rights or obligations derived from the ownership
25 of interests in oil, gas, or minerals.

26 (vi) Interacting with regulatory agencies in support of
27 activities relating to exploring for and producing oil, gas, or

1 minerals, including unitizing or pooling interests in oil, gas, or
2 minerals.