

HOUSE BILL NO. 5139

June 24, 2021, Introduced by Reps. Hertel, Hope, Aiyash, Scott, Clemente, Breen, Stone, Sabo, Young, Hood, Steckloff, Haadsma, Shannon, Tyrone Carter, Rogers, Sowerby, Pohutsky, Brenda Carter, Cherry, Ellison, Cavanagh, Kuppa, Cynthia Johnson, Brixie, Coleman and Yancey and referred to the Committee on Workforce, Trades, and Talent.

A bill to amend 1936 (Ex Sess) PA 1, entitled
"Michigan employment security act,"
by amending section 44 (MCL 421.44), as amended by 2015 PA 240.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 44. (1) "Remuneration" means all compensation paid for
2 personal services, including commissions and bonuses, and except
3 for agricultural and domestic services, the cash value of all
4 compensation payable in a medium other than cash. Any remuneration
5 payable to an individual that has not been actually received by

1 that individual within 21 days after the end of the pay period in
 2 which the remuneration was earned, shall, for the purposes of
 3 subsections (2) to (5) and section 46, be considered to have been
 4 paid on the twenty-first day after the end of that pay period. If
 5 back pay is awarded to an individual and is allocated by an
 6 employer or legal authority to a period of weeks within 1 or more
 7 calendar quarters, the back pay shall be considered paid in that
 8 calendar quarter or those calendar quarters for purposes of section
 9 46. The reasonable cash value of compensation payable in a medium
 10 other than cash shall be estimated and determined in accordance
 11 with rules promulgated by the unemployment agency. Remuneration
 12 includes tips actually reported to an employer under section
 13 6053(a) of the internal revenue code **of 1986**, 26 USC ~~6053(a)~~, **6053**,
 14 by an employee who receives tip income. Remuneration does not
 15 include ~~either~~ **any** of the following:

16 (a) Money paid an individual by a unit of government for
 17 services rendered as a member of the National Guard of this state,
 18 or for similar services to another state or the United States.

19 (b) Money paid by an employer to a worker under a supplemental
 20 unemployment benefit plan consistent with the criteria for a
 21 supplemental unemployment benefit plan as described in Internal
 22 Revenue Service ~~publication~~ **Publication** 15-A, ~~employer's~~
 23 ~~supplemental tax guide~~, **Employer's Supplemental Tax Guide**,
 24 regardless of whether the benefits are paid from a trust or by the
 25 employer.

26 (c) **Money paid under section 5 of the relocation, closing, and**
 27 **mass layoff severance pay act, by an employer to an eligible**
 28 **employee. As used in this subdivision, eligible employee means that**
 29 **term as defined in section 3 of the relocation, closing, and mass**

1 **layoff severance pay act.**

2 (2) "Wages", subject to subsections (3) to (5), means
3 remuneration paid by employers for employment and includes tips
4 actually reported to an employer under section 6053(a) of the
5 internal revenue code **of 1986**, 26 USC ~~6053(a)~~, **6053**, by an employee
6 who receives tip income. If any provision of this subsection
7 prevents this state from qualifying for any federal interest relief
8 provisions provided under section 1202 of title XII of the social
9 security act, 42 USC 1322, or prevents employers in this state from
10 qualifying for the limitation on the reduction of federal
11 unemployment tax act credits as provided under section 3302(f) of
12 the federal unemployment tax act, 26 USC 3302, that provision is
13 invalid to the extent necessary to maintain qualification for the
14 interest relief provisions and federal unemployment tax credits.

15 (3) For the purpose of determining the amount of contributions
16 due from an employer under this act, wages are limited by the
17 taxable wage limit applicable under subsection (4). For this
18 purpose, wages exclude all remuneration an employing unit pays to
19 an individual that exceeds the taxable wage limit on which
20 unemployment taxes were paid or were payable in this state and in
21 any other states for that employee by the employing unit within
22 that year. If a successor employing unit becomes a transferee
23 during a calendar year in a transfer of business, as defined in
24 section 22, of a predecessor employing unit and immediately after
25 the transfer employs in his or her trade or business an individual
26 who immediately before the transfer was employed in the trade or
27 business of the predecessor, then for the purpose of determining
28 whether the successor has paid remuneration with respect to
29 employment equal to the taxable wage limit to that individual

1 during the calendar year, any remuneration with respect to
2 employment paid to that individual by the predecessor during the
3 calendar year and before the transfer shall be considered as having
4 been paid by the successor.

5 (4) The taxable wage limit for each calendar year is \$9,500.00
6 in the calendar years 1986 through 2002, and \$9,000.00 for calendar
7 years after 2002 and before 2012, or the maximum amount of
8 remuneration paid within a calendar year by an employer subject to
9 the federal unemployment tax act, 26 USC 3301 to 3311, to an
10 individual with respect to employment as defined in that act that
11 is subject to tax under that act during that year for each calendar
12 year, whichever is greater. For calendar years beginning 2012, the
13 taxable wage limit is \$9,500.00, but if at the beginning of a
14 calendar quarter the balance in the unemployment compensation fund
15 equals or exceeds \$2,500,000,000.00 and the agency projects that
16 the balance will remain at or above \$2,500,000,000.00 for the
17 remainder of the calendar quarter and for the entire succeeding
18 calendar quarter, the taxable wage limit for that calendar quarter
19 and the succeeding calendar quarter is \$9,000.00 for an employer
20 that is not delinquent in the payment of unemployment
21 contributions, penalties, or interest. For calendar years beginning
22 2016, if on June 30 of the preceding year the balance in the
23 unemployment compensation fund equals or exceeds \$2,500,000,000.00
24 and the agency projects that the balance will remain at or above
25 \$2,500,000,000.00 for the succeeding calendar quarter, the taxable
26 wage limit for the calendar year is reduced to \$9,000.00 for an
27 employer that is not delinquent in the payment of unemployment
28 contributions, penalties, or interest. If the unemployment
29 compensation fund balance on June 30 or the agency projection does

1 not meet these conditions, the \$9,500.00 taxable wage limit applies
2 to all employers in the next calendar year. For purposes of this
3 subsection, an employer is delinquent in the payment of
4 unemployment contribution, penalties, or interest if the employer
5 has a quarterly unpaid balance of \$25.00 or more, unless 1 or more
6 of the following apply:

7 (a) The employer has filed a timely protest or appeal of the
8 notice of assessment and the assessment has not become final.

9 (b) Within 45 days after the beginning of the first calendar
10 quarter in which the reduced taxable wage base limit takes effect
11 for nondelinquent employers, all outstanding balances owed to the
12 unemployment agency are paid in full.

13 (c) If the employer is a domestic employer, all applicable
14 contributions, interest, and penalties are paid on or before the
15 date specified by the agency under section 13(1).

16 (5) For the purposes of this act, the term "wages" does not
17 include any of the following:

18 (a) The amount of a payment, including an amount paid by an
19 employer for insurance or annuities or into a fund, to provide for
20 such a payment, made to, or on behalf of, an employee or any of the
21 employee's dependents under a plan or system established by an
22 employer that makes provision for the employer's employees
23 generally, or for the employer's employees generally and their
24 dependents, or for a class or classes of the employer's employees,
25 or for a class or classes of the employer's employees and their
26 dependents, on account of retirement, sickness or accident
27 disability, medical or hospitalization expenses in connection with
28 sickness or accident disability, or death.

29 (b) A payment made to an employee, including an amount paid by

1 an employer for insurance or annuities, or into a fund, to provide
2 for such a payment, on account of retirement.

3 (c) A payment on account of sickness or accident disability,
4 or medical or hospitalization expenses in connection with sickness
5 or accident disability, made by an employer to, or on behalf of, an
6 employee after the expiration of 6 calendar months following the
7 last calendar month in which the employee worked for the employer.

8 (d) A payment made to, or on behalf of, an employee or the
9 employee's beneficiary from or to a trust described in section
10 401(a) of the internal revenue code of 1986, 26 USC ~~401(a)~~, **401**,
11 that is exempt from tax under section 501(a) of the internal
12 revenue code of 1986, 26 USC ~~501(a)~~, **501**, at the time of the
13 payment, unless the payment is made to an employee of the trust as
14 remuneration for services rendered as an employee and not as a
15 beneficiary of the trust, or under or to an annuity plan which, at
16 the time of the payment, is a plan described in section 403(a) of
17 the internal revenue code of 1986, 26 USC ~~403(a)~~, **403**, or under or
18 to a bond purchase plan that at the time of the payment, is a
19 qualified bond purchase plan described in former section 405(a) of
20 the internal revenue code.

21 (e) The payment by an employer, without deduction from the
22 remuneration of the employee, of the tax imposed upon an employee
23 under section 3101 of the federal insurance contributions act, 26
24 USC 3101.

25 (f) Remuneration paid in any medium other than cash to an
26 employee for service not in the course of the employer's trade or
27 business.

28 (g) A payment, other than vacation or sick pay, made to an
29 employee after the month in which the employee attains the age of

1 65, if the employee did not work for the employer in the period for
2 which the payment is made.

3 (h) Remuneration paid to or on behalf of an employee as moving
4 expenses if, and to the extent that, at the time of payment of the
5 remuneration it is reasonable to believe that a corresponding
6 deduction is allowable under section 217 of the internal revenue
7 code of 1986, 26 USC 217.

8 Enacting section 1. This amendatory act does not take effect
9 unless Senate Bill No. ____ or House Bill No. 5140 (request no.
10 03152'21) of the 101st Legislature is enacted into law.