

Legislative Analysis



UNEMPLOYMENT DUE TO COVID-19

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Senate Bill 886 as enacted
Public Act 229 of 2020

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Ken Horn

House Committee: Ways and Means

Senate Committee: Economic and Small Business Development [Discharged]

Complete to 10-29-20

SUMMARY:

Senate Bill 886 amends the Michigan Employment Security Act to address unemployment benefits related to circumstances arising from the COVID-19 pandemic.

Claimant laid off or placed on leave of absence due to COVID-19

Under the bill, any benefit paid to a claimant who was laid off or placed on a leave of absence cannot be charged to the account of any employer that otherwise would be charged but instead must be charged to the Nonchargeable Benefits Account of the Unemployment Insurance Agency (UIA). This provision does not apply after December 31, 2020.

Maximum benefit amount

The act prescribes how an individual's maximum benefit amount is determined. Generally, an eligible claimant may receive benefits for not more than 20 weeks or less than 14 weeks in a benefit year. Under the bill, for benefit years and claims for weeks beginning before January 1, 2021, for each eligible individual who files a claim for benefits and establishes a benefit year, not more than 26 weeks or less than 14 weeks of benefits may be payable to an individual in a benefit year.

Exception to waiver of requirement to seek work

The act requires an unemployed individual receiving benefits to be actively engaged in seeking work, but this requirement can be waived if the individual is laid off and his or her employer notifies the UIA that the layoff is temporary. However, this waiver does not apply to weeks of unemployment for which the claimant is seeking extended benefits and failed to actively engage in seeking work, unless the individual is engaged in UIA-approved training. The bill deletes the provision described in the preceding sentence (the exception to the waiver).

Shared-work plans

The act allows an employer to apply to the UIA for approval of a shared-work plan if the employer meets certain requirements concerning reports, payments, account reserves, payment of wages, and hiring assurances. Under the bill, until December 31, 2020, the UIA may approve a shared-work plan submitted by an employer during the COVID-19 pandemic even if the above requirements are not met.

In addition, under the act, the employer must certify that the implementation of a shared-work plan is in lieu of layoffs that would affect at least 15% of the employees in the affected unit. Under the bill, until December 31, 2020, that figure is 10%.

The UIA can approve a shared-work plan only if it meets certain requirements, including that all employees in the affected unit are participating employees except for an employee who has been employed in the unit for less than three months or one whose hours of work per week are 40 or more hours. The bill removes the first exception (three months' employment) and provides that the second (over 40 hours a week) applies only until December 31, 2020. Under the bill, beginning January 1, 2021, there are no exceptions to the requirement that all employees in an affected unit must be participating employees.

Finally, for UIA approval, the reduction percentage must be at least 15% and no more than 45%. Under the bill, until December 31, 2020, it must be at least 10% and not more than 60%.

Leaving work for medical reasons

Under the act, an individual is disqualified from receiving unemployment under certain conditions. Under the bill, for claims for weeks beginning before January 1, 2021, an individual is considered to have left work involuntarily for medical reasons if any of the following reasons apply:

- He or she leaves work to self-isolate or self-quarantine in response to elevated risk from COVID-19 because he or she is immunocompromised.
- He or she displayed a commonly recognized principal symptom of COVID-19 that was not otherwise associated with a known medical or physical condition of the individual.
- He or she had contact in the previous 14 days with someone with a confirmed diagnosis of COVID-19.
- He or she needed to care for someone with a confirmed diagnosis of COVID-19.
- He or she had a family care responsibility resulting from a government directive regarding COVID-19.

Under the bill, for claims for weeks beginning before January 1, 2021, the UIA may consider an individual laid off if he or she became unemployed for any of the reasons described above.

The act also specifies conditions under which a leave of absence does not constitute being unemployed. Under the bill, for claims for weeks beginning before January 1, 2021, an individual on a leave of absence for any of the reasons identified above may be considered to be unemployed unless he or she was already on sick leave or received a disability benefit.

Leaving work to accept work from other employer

Under the act, if an individual leaves work to accept permanent full-time work with another employer or to accept a referral to another employer from the individual's union hiring hall and performs services for that employer, the individual is not disqualified from receiving unemployment, and the act prescribes the employer to which the benefits are to be charged.

Under the bill, beginning May 1, 2020, and until the effective date of the bill, if an individual leaves work to accept permanent full-time work with another employer, he or she is considered to meet the requirements described above regardless of whether the work was permanent full-time work and regardless of whether the individual actually performed any services for the other employer. Benefits payable to the individual must be charged to the Nonchargeable Benefits Account.

Determining a claimant's nonmonetary eligibility

Under the bill, beginning May 1, 2020, and until the effective date of the bill, in determining a claimant's nonmonetary eligibility to qualify for benefits, the UIA cannot issue a determination with respect to the claimant's separation from a base period or benefit year employer other than the separating employer, and the UIA must consider the claimant to have satisfied the requirements of section 29(2) and (3), which concern requalification for benefits.

Employer protest of payment of benefits

Under the bill, for benefits charged after March 15, 2020, but before January 1, 2021, an employer has one year after a benefit payment is charged against the employer's account to protest the charge.

Validity of claims

Under the bill, for a claim filed after March 15, 2020, but before the bill's effective date, the UIA cannot reconsider the claim based solely on whether an applicable executive order issued by the governor that was in effect at the time the claim was initially examined did or did not have the force of law.

Through December 31, 2020, a new, additional, or continued claim for unemployment benefits filed within 28 days after the last day the claimant worked is considered filed on time under the act and rules promulgated under the act.

UIA hiring alternative

Before hiring a new employee, the UIA must coordinate with the Department of Labor and Economic Opportunity and the Michigan Works agencies to determine whether an existing employee of either of those agencies can be used instead.

MCL 421.17 et seq.

BACKGROUND:

On October 2, 2020, in a 4–3 opinion, the Michigan Supreme Court ruled that the governor did not have the authority to declare a state of emergency or issue emergency orders after April 30, 2020.¹

¹ <https://courts.michigan.gov/Courts/MichiganSupremeCourt/Clerks/Documents/2020-2021/161492/In%20re%20Certified%20Questions-OP.pdf>

The governor's declarations of a state of emergency, and the executive orders issued under them, were primarily based on two acts: 1945 PA 302 (commonly known as the emergency powers of the governor act) and the Emergency Management Act (1976 PA 390).

Each act authorizes the governor to proclaim a state of emergency and issue orders responding to the emergency. 1945 PA 302 provides that these orders are effective until the state of emergency ends. Under the Emergency Management Act, a state of emergency or disaster must be terminated after 28 days unless the legislature approves an extension.

In its opinion, the Supreme Court ruled 1945 PA 302 to be an unconstitutional delegation of legislative power. Because the legislature had extended the state of emergency under the Emergency Management Act to April 30 but did not extend it past that time, the court also ruled that the governor had no authority to declare a state of emergency or issue emergency orders under that act after that date.

Although some COVID-19-related orders can be effective under other authority (the Public Health Code, for example), the governor's orders issued after April 30 have no continuing legal effect. In a court filing, the governor said that over 30 executive orders in effect on October 2 were based on authority granted under 1945 PA 302.

This bill would address the same issues as several executive orders concerning unemployment insurance, the most recent of which was EO 2020-76,² and put several of their provisions into law.

FISCAL IMPACT:

Senate Bill 886 would have significant fiscal implications for the UIA within the Department of Labor and Economic Opportunity (DLEO) and on other units of state and local government. The bill would codify numerous executive orders related to unemployment insurance. In sum, the changes in the bill would extend the maximum period of benefit eligibility in a benefit year from 20 weeks to 26 weeks (a 30% increase) for benefit years and claims for weeks beginning before January 1, 2021; relax requirements on shared-work plans (including an increase to the maximum reduction percentage) through December 31, 2020; and generally increase eligibility for unemployment benefits. These changes would increase liabilities from the Unemployment Compensation Fund by an indeterminate, but likely significant, amount.

By allowing for expanded shared-work plans, the bill would allow for units of state and local government (in addition to other employers) to potentially reduce employment costs through December 31, 2020.

The bill would require that benefits for claimants laid off or placed on a leave of absence through December 31, 2020, be charged to the Nonchargeable Benefits Account, rather than the employer's individual account. The Nonchargeable Benefits Account is used to

² Executive Order 2020-76, issued May 6, 2020 (<http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-76.pdf>).

cover unemployment benefit costs that are pooled among employers and benefits for employers that are out of business. Charging benefits to the Nonchargeable Benefits Account would expose employers to a maximum tax liability of 1%, whereas if the benefits were charged to the Chargeable Benefits Component, the tax liability could be as high as 6.3%. The Nonchargeable Benefits Component is assessed on the first \$9,000 of an employee's wages (in the majority of cases) at a tax with a rate calculated according to the following table:

Scenario	Nonchargeable Benefit Component
Employer has benefits charged in previous 60 months	1.00%
Chargeable Benefits Component calculates to less than .2%	.50%
There are no benefits charged in previous 60 months	.10%
There are no benefits charged in previous 72 months	.09%
There are no benefits charged in previous 84 months	.08%
There are no benefits charged in previous 96 months	.07%
There are no benefits charged in previous 108 months	.06%

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.